

(2018) 11 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 282 Of 2013, IA No. 340 Of 2013

**Mohd Ashraf And Anr. @APPELLANT@Hash State Of Jammu & Kashmir
And Ors**

Date of Decision : 22-11-2018

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 420, 429, 467, 468
Code Of Criminal Procedure, 1973 — Section 156, 156(3), 482

Citation : (2018) 11 J&K CK 0041

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : M. I. Sherkhan, Sudesh Magotra, Suyash Singh Chandel

Final Decision : Dismissed

Judgement

1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C) petitioners seek quashing of the FIR No.505/2013 dated 25.09.2013, for commission of offences under section 420, 467, 468 RPC registered at Police Station Rajouri, on the ground that the same is illegal, against the facts and has been registered by the complainant with mala fide intention only to harass the petitioners.

2. The case of the petitioners is that the complainant-private respondent No.4 was engaged as Cook in Government Primary School Atti Gali, Gurdan Bala, Tehsil and District Rajouri in the month of September, 2005 and thereafter Chief Education Officer Rajouri, issued order No.CEOR MDM/56/07/4231-47 dated 17.10.2006 whereby all the Cooks were disengaged due to the non-availability of funds and the private respondent-Tazeem Akhter was also disengaged. The private respondent also submitted her resignation which was properly signed by her close relatives Lal Hussain, Mohd Hussain and also signed by Headmaster Government Middle School Gurdan Bala and also by Mohd. Razak. Thereafter, private respondent- Tazeem Akhter took admission in Government Degree College, Rajouri during the Session 2006-2007 under Roll No. 705, Registration No. 1331I-RCU-06 and appeared in the examination under Roll No. 511045.

3. Learned counsel for the petitioners states that the complainant joined the Degree College, Rajouri and thereafter no one was there to perform the duty of the Cook and then Chief Education Officer Rajouri and Zonal Education Officer concerned directed the petitioner No.1 to bring some candidate who will work as Cook and the petitioner No.2 was engaged in the Month of October 2006 and ever since, the petitioner No.2 has been performing her duties as Cook in the Government Primary School Atti Gali Gurdan Bala. It is stated that the private respondent with the help of her father Mohd. Rafeeq managed one order from the office of Chief Education Officer, Rajouri bearing No. CEOR/624-25 dated 08.04.2013 and after proper verification the Chief Education Officer, Rajouri, cancelled the said order vide No.CEOR/968-69 dated 15.04.2013 because that order was totally a fraud, because the private respondent had left the job in the month of September 2006 and the name of the petitioner No.2 was recommended to the Higher authorities vide order dated 15.04 2013. It is further stated that private respondent- Tazeem Akhter filed a writ petition before this Court bearing SWP No.1342 of 2013 and this Court vide order dated 05.06.2013, directed the respondents that private respondent- Tazeem Akhter shall be permitted to perform her duties as Cook in the light of order passed by Chief Education Officer, Rajouri dated 08.04.2013 and she would be paid her wages in accordance with rules. Thereafter, the Chief Education Officer, Rajouri vide No CEOR /9183 dated 27.07 2013 and Zonal Education Officer concerned permitted the private respondent No.4 to work temporarily as a cook till the final decision of the above said writ petition. It is stated that as soon as the petitioner No.2 came to know about the passing of the above said order, she immediately challenged the same through the medium of LPA No.131/2013 and the Hon'ble Division Bench of this Court vide order dated 19.08.2013 stayed the order dated 05.06.2013 passed by the learned Single Judge.

4. The further case of the petitioners is that the private respondent No. 4, her father and husband are trying to involve the petitioners in a false case, because there was no other alternative for the them to get back the job of Cook, so they filed one complaint in the Court of learned Chief Judicial Magistrate, Rajouri under section 156(3) Cr.P.C and managed registration of FIR No. 505/2013 with the Police Station, Rajouri under Sections 429, 467, 468 RPC and in the complaint and in the FIR it is nowhere mentioned that petitioners have written the resignation by their own hand writing or through any other persons, but it is only mentioned that complainant had not given any resignation. However, the private respondent has only endorsed in the FIR/complaint that she has not given any resignation and moreover no resolution was signed by the Village Education Committee, particularly, by Mohd Yousuf, Lal Hussain, Fazal Hussain, Mohd Hussain.

5. The further stand of the petitioners is that petitioner No.2 was not engaged after the resignation of the private respondent. Otherwise also, private respondent No.4 was disengaged in September, 2006 which is admitted by the private respondent in her writ petition bearing SWP No. 1342/2013 and

mentioned in the para-3 of the writ petition filed by the respondent No.4, which is pending disposal before this Court. However, the private respondent concealed this fact in the writ petition that she had taken admission in the Government Degree College, Rajouri. It is stated that the FIR No.505/2013 registered against the petitioners is totally false and fabricated, because the petitioner No.2 was engaged in the Month of October 2006 and she is working for the last more than 7 years continuously. It is further stated that private respondent has also not challenged the appointment of the petitioner No.2 well in time within the limitation period prescribed under law and filed the false case. There was no occasion and no need to prepare the false resignation or to sign on behalf of the close relatives of the private respondent-Tazeem Akhter, otherwise also the private respondent-Tazeem Akhter got married in another revenue village, Gurdan Pain and she was not eligible for engagement as Cook in village Gurdan Bala. The private respondent and her father with the help of other four persons got registered an FIR against the petitioners only to harass them, because there was no occasion for the engagement of the private respondent as Cook. It is stated that petitioner No. 2 was engaged after the private respondent took admission in Government Degree College, Rajouri and, therefore, there was no other alternative with the department except to engage the petitioner No.2.

6. On the other hand, learned counsel for the private-respondent No.4 states that the private-respondent No.4 was engaged as cook in EGS Center in year 2005 and in the year 2006 by way of general order dated 17.10.2006 was disengaged and in year 2008 was again re-engaged. It is stated that despite performing duties w.e.f. 2008, salary was not paid to private respondent No.4 and she approached CEO concerned and requested him to release her salary and after that CEO directed the ZEO concerned to furnish a report regarding the matter and a report was submitted by the ZEO concerned dated 17.11.2012 by virtue of which it came to the knowledge of private-respondent No.4 that on the basis of a frivolous resignation prepared by the petitioners she was disengaged, when the facts remains that the private respondent No.4 performed her duties till 2012. It is stated that in the records the private respondent has been shown as cook in Govt. EGS Centre Atti Gali, however, pay was given by the petitioner No.1 to petitioner No. 2. The stand of the private respondent is that the petitioners in LPA No.131/2013 had submitted that the respondent (Tazeem AKhter) submitted her resignation to the Incharge Teacher Govt. EGS Centre Atti Gurdhan Bala Zone Rajouri on 29.09.2006 which is fake and infact it was prepared by the petitioner No.1 so as to engage his own wife i.e. petitioner No.2 after putting fake signatures of private respondent No. 4 on the said resignation and on the basis of said resignation, the pay for the post of Cook was released in favour of the petitioner No. 2 by the petitioner No. 1. The further stand of the private respondent No.4 is that in the aforementioned LPA it is mentioned that petitioner No.2 was appointed on 18.10.2006, and it is not understandable as to how she was engaged on the said date when by way of a general order dated 17.10.2006 all the Cooks were disengaged. It is stated that a fake resignation

was prepared attributed to the respondent No.4, when the fact remains that the private respondent No.4 never resigned.

7. Mr. Chandel, learned counsel appearing on behalf of private respondent No. 4 further states that the claim of the petitioner No.2 that she was engaged as Cook in the month of October, 2006 is totally wrong as it is an admitted fact that the disengagements of Cooks from all the EGS Centers was ordered on 17.10.2006 and for re-engaging the candidates was ordered only in the year 2008, therefore, question of engaging the petitioner No.2 does not arise at all. The further stand taken by the private respondent No. 4 is that the chief Education officer directed vide Communication dated 03.08.2010 to disengage petitioner No.2 and allow the respondent No.4 to perform her duties. It is stated that despite directions issued by CEO the needful was not done and the respondent No.4 filed SWP No. 1342/2013 seeking appropriate directions to the respondents to allow her to perform her duties of Cook and release all the benefits in her favor. Thereafter, vice order dated 05.06.2013 passed by this Court, private respondent No. 4 was allowed to perform her duties.

8. I have considered the rival contentions.

9. The law with regard to quashing of FIR while exercising power u/s 561-A Cr.P.C., is now well settled. FIR can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice.

10. The expression ends of justice and to prevent abuse of process of any court are intended to work out either when an innocent person is unjustifiably subjected to an undeserving prosecution or if an ex-facie all merited investigation is throttled at the threshold without allowing the police to collect the evidence in order to know about truthfulness of allegations leveled in FIR. Inherent jurisdiction has to be exercised sparingly, carefully and with great caution. These powers cannot be used to stifle the legitimate prosecution/investigation.

11. From bare perusal of allegations leveled in FIR and facts which have emerged during investigation, cognizable offences of serious nature have been made out against the petitioners; there are specific allegations against the petitioners, who are husband and wife, that they forged and prepared false resignation letter of respondent no.4 Tazeem Akhtar on 29.09.2006 who was working as cook in Govt. ECG Centre Gurdanbala Zone Rajouri, in order to give benefit to petitioner no.2, and on the basis of that forged resignation, they got appointed petitioner no.2 as cook vide order dated 18.10.2006; whereas the govt. by way of general order dated 17.10.2006 has already disengaged all cooks.

12. The investigation so far has been conducted prima facie shows involvement of petitioners in commission of crime.

13. The disputed question of facts as averred in this petition cannot be appreciated for quashing the FIR. Police has statutory duty to investigate the

cognizable offences in terms of section 156 of C.P.C; this duty cannot be scuttled, while exercising jurisdiction under section 561-A Cr.P.C. The defense of accused cannot be considered at this stage. The FIR need not be encyclopedia of all relevant facts and more incriminating material will be unfolded only during investigation. FIR cannot be placed on the same pedestal as the charge; in case an FIR showing facts which makes out cognizable offence is nipped in the bud even before the entire facts are unraveled, incalculable harm might be caused by depriving the police of their right to collect evidence. It is not the case of petitioners that there is some legal bar in law in investigation of the matter.

14. In 2008 (3) SCC 753 case titled *Som Mittal v. Govt. of Karnataka*, it has been held as under:-

"(10) In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power under Section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under Section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

(11) This Court, in a catena of decisions, consistently gave a note of caution that inherent power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. This Court also held that the High Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extra-ordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whims and caprice.

(12) We now refer to a few decisions of this Court deprecating the exercise of extra ordinary or inherent powers by the High Court according to its whims and caprice. (13) In *State of Bihar v. J.A.C. Saldanha* (1980) 1 SCC 554 this Court pointed out at SCC p. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more. (14) In *Hazari Lal Gupta v. Rameshwar Prasad*

(1972) 1 SCC 452 this Court at SCC p. 455 pointed out:

In exercising jurisdiction under Section 561-A of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.⁽¹⁵⁾ In *Jehan Singh v. Delhi Administration* (1974) 4 SCC 522 the application filed by the accused under Section 561-A of the old Code for quashing the investigation was dismissed as being premature and incompetent on the finding that prima facie, the allegations in the FIR, if assumed to be correct, constitute a cognizable offence.

(16) In *Kurukshetra University v. State of Haryana* (1977) 4 SCC 451, this Court pointed out:

It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a first information report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the FIR. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases. (emphasis supplied) (17) In *State of Bihar v. Murad Ali Khan* (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not."

15. All the pleas taken in the petition and those argued may be relevant for discharge of accused, but not for quashing the FIR, because all the pleas are pertaining to appreciation of facts.

16. In view of above discussion, this petition is dismissed. Interim stay, if any, is vacated. However petitioners are at liberty to take all the pleas of facts or law before court below at the time of framing of charge.