

(2019) 12 J&K CK 0074

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1338 Of 2018, IA No. 1 Of 2018

Mohd Mushtaq And Others

APPELLANT

Vs

State Of J&K And Another

RESPONDENT

Date of Decision : 31-12-2019

Acts Referred:

Citation : (2019) 12 J&K CK 0074

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Sachin Gupta, Raman Sharma

Final Decision : Dismissed

Judgement

1. In this petition, the petitioners are seeking direction to the respondents to monitor the investigation of the case FIR No. 46/2015 registered by the Police Station, Darhal; with a further prayer for transferring the investigation of the case from the present Special Investigation Team to any other agency, if required or any other order or direction which this Court deems fit and proper in the facts and circumstances of the case.

2. Brief facts of the case are that the case bearing FIR No. 46/2015 was registered with the Police Station, Darhal, on the set of allegation that one of the employee of the Jammu and Kashmir Bank, namely, M.Ajaz Malik has been found in some fraudulent activity and has committed some fraud. It was further mentioned in the FIR that the prima-facie case involves the wrong crediting of the amount, which was meant for the welfare of the certain class of people and the same has been wrongly credited in the account of some other persons. The written complaint was submitted by the Branch Head, J&K Bank Ltd. Darhal to the Incharge Police Station Darhal and case bearing FIR no.46/2015 was registered. After the registration of the case, the investigation was carried out, first by the local police and thereafter by the Special Investigation Team, which submitted the charge sheet before the court of Special Mobile Magistrate,

Thanamandi on 11.12.2017 and on presentation of the challan, an application came to be filed by all the accused seeking further investigation. The matter was heard by the learned Magistrate who vide order dated 15.12.2017 while allowing the application of the applicants directed SSP Rajouri to conduct further thorough and impartial investigation and submit report accordingly.

3. It is contended that since the police was conducting the investigation, subsequently Baba Ghulam Shah Badshah University took the cognizance of the matter and constituted the Facts Finding Committee wherein it was found that a scholar scam has been committed in the University and as per the said Committee, the gross financial irregularities, embezzlement and bungling in the scholarship money have been done by the officers/officials of the University, who, instead of acting as its guardians, have misused their official powers who not only caused huge dent to the creditability of the institution, but, usurped the scholarship money of needy and poor students. The committee was of the opinion that the scholarship and the security refund scams, which have come to the surface, were just tip of the iceberg, and that overall embezzlement of funds could be in crores of rupees. This needs a thorough investigation by police/vigilance/CBI. The Committee also observed that the then Vice Chancellor ignored to cease and safeguard the whole record when the matter was initially brought to his notice and instead he allowed the accused officials/officers to hold the record for months together after the report of the embezzlement, which gave them free hand to tamper with the evidences against them. In the report submitted by the Facts Finding Committee, prima-facie the role of two persons, namely, Mr. Rashid Choudhary and Mr. Muzaffar Malik both employee of the University surfaced and action against them was recommended. The grounds averred in the petition inter-alia are that the petitioners are innocent and have not committed any offence and they are falsely implicated. It is contended that despite their being a judicial finding in the matter that the Police is not conducting the investigation in the fair manner and also that the University in their report has recommended the action against two persons, against whom till date no action has been taken either by the Police or by the University.

4. On the other hand, learned counsel for the respondents submits that the accused, namely, Mohd Ajaz Malik Code 912588) an ex-employee of the bank was working as banking associate has been found in the fraudulent act of defrauding the amount of Rs.2,13,700. He further submits that there seems to be a nexus between the employees of the University and Mohd Ajaz Malik. He submits that the investigation is going on and some more record pertaining to the case is required to be obtained from Phari Board Advisory, Tribal Affairs, Director Social Welfare Jammu, BGSBU and J&K Bank, Darhal, which is still awaited. On the receipt of requisite record and after scrutiny of the record if anybody else is found involved in the commission of the crime, a supplementary final report shall be submitted in the court of law.

5. Heard learned counsel for the parties and perused the record.

6. The subject matter of the instant writ petition relates to embezzlement and bungling. During pendency of the present petition, charge sheet/ challan has been presented, which is also evident from the petition, being CRMC no.598/2018, in which petitioners have thrown challenge to the charge sheet/ challan. In such circumstances instant petition has become infructuous and is liable to be dismissed, as such.

7. In view of the above, this petition is dismissed.