

(2018) 07 J&K CK 0049

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No.. 179 Of 2013 & Miscellaneous Appeal No.222 Of 2013

Mohd. Rashid And Ors. @APPELLANT@Hash State Of Jammu & Kashmir And Ors

Date of Decision : 12-07-2018

Acts Referred:

Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 127, 147, 307, 323, 336, 341, 353, 382

Code of Criminal Procedure 1973, — Section 561A

Citation : (2018) 07 J&K CK 0049

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The petitioners are the residents of Village Saaj, Tehsil Thanamandi, District Rajouri.

2. The case of the petitioners is that they have a common graveyard in which the ancestors of the people of the area are buried and the

graveyard is situated in Village Saaj, Tehsil Thanamandi, District Rajouri, measuring 15 Kanals, 17 Marlas falling under Khasra No. 529 and Eid

Gah, as per the revenue record the said land is Gair Mumkin Kabristan and Eid Gah and is under the possession of Ahil-e-Islam.Â

3. The grievance of the petitioners is that respondent No. 6-Tehsildar Thanamandi started construction of a road through the middle of the

graveyard with the help of local police and respondents 4 and 5 which is covered by Survey No. 529 situated in the aforesaid village. It is stated

that Tehsildar Thanamandi, District Rajouri, himself came on spot along with respondents 4 and 5 and ordered to construct the roadÂ ostensibly

under the influence of, pressure and in view of having taken some consideration

from the people who would be beneficiaries of the road. The petitioners resisted and forced the respondents to stop the construction on the ground that the land belongs to Ahil-e-Islam and there is a graveyard. It is stated that instead stopping the construction, the respondent No. 6 - Tehsil Thanamandi, District Rajouri took the matter personal and ordered to arrest the petitioners. The petitioners sought information under RTI Act to the Public Works Department Division Rajouri, as to whether the road was being constructed by the department and in the information received the fact is that Public Works Department is not constructing any road through the Graveyard. It is stated that petitioner also approached the Administrator Auqaf Shahdara Sharief and requested him to take necessary action to protect the Graveyard. Thereafter, Administrator Auqaf Shahdara Sharief forwarded a letter to Deputy Commissioner, Rajouri for registration of FIR against the encroachers, however, respondent No. 4 has not taken any action against the encroachers who are the beneficiaries of the road. It is further stated that instead of taking any action against the encroachers the respondents 4 and 5 registered a false/frivolous FIR against some of the petitioners being FIR No. 32/2013 dated 15.02.2013.

4. Learned counsel for the petitioners states that petitioners also approached the Deputy Inspector General, Poonch-Rajouri Range, for taking action against the encroachers and also the erring police officials who are in league with the encroachers. The complaint of the petitioners was forwarded to respondent No. 4 for factual report. The respondent No. 4-Sub-Divisional Police Officer, Thanamandi, District Rajouri forwarded the complaint to respondent No. 6- Tehsil Thanamandi, District Rajouri to seek report from revenue field staff. The Patwari concerned furnished report in which he categorically stated that the land through which the road is being constructed is entered as Qabristen and Idd-Gah in the revenue records under Khasra No. 529 of Village Saaj.

5. Learned counsel for the petitioners further states that earlier petitioners filed a writ petition in this Court bearing OWP No. 725/2013, which came to be disposed of on 21.05.2013, directing the Deputy Commissioner, Rajouri and Administrator Auqaf Shahdara Sharief, Rajouri to take immediate steps to protect the graveyard and to ensure that no motorable

road is constructed through a graveyard. Thereafter, on receipt of the aforesaid order of this Court the respondents 4,5 and 6 got irritated and registered an FIR No.78/2013 dated 01.06.2013 for commission of offences under Sections 341, 323, 127, 382 and 336 RPC against the petitioners at Police Station, Thanamandi, where in it was alleged by the complainant that he was waylaid by the petitioners 1 to 5 while he was driving his tractor near Eid "Gah Tanda" attacked him with sticks and axes and also with stones. It was further alleged by the complainant that during the attack his eye got injured and some persons amongst the petitioners tried to attack him with a knife and during this scuffle Rs. 4500/- and one watch was forcibly taken away from him by the petitioners. It is further stated that on 03.06.2013 on the complaint of one Nazir Hussain another FIR came to be registered against the petitioners being FIR No. 79/2013 in the Police Station Thanamandi on the same allegations as contained in FIR No.78/2013 i.e., under Sections 341, 323, 382, 147 and 336 RPC.

6. It is further stated that pursuant to the order dated 21.05.2013 passed by this Court in OWP No. 725/2013, the Deputy Commissioner, Rajouri along with Assistant Commissioner Revenue Rajouri, Tehsildar Thanamandi District Rajouri visited the spot and after hearing the local residents of the village Saaj including the petitioners, he was satisfied that the road being constructed through the Graveyard is totally unjustified, so he passed instructions to the Tehsildar, SDPO Thanamandi and SHO Thanamandi not to go ahead with the plan of constructing road through the Graveyard. The instruction passed by Deputy Commissioner, Rajouri infuriated the respondent No. 6, Tehsildar, respondent No. 4-

Sub-Divisional Police Officer, Thanamandi, District Rajouri and respondent No. 5- SHO Police Station, Thanamandi were still bent upon to construct the road through the Graveyard, so the third FIR was lodged against the petitioners except petitioners No. 6 and 9 being FIR No.

85/2013 dated 06.06.2013 for offences under Sections 341, 147, 382, 323, 336, 353 and 307 RPC. In the said FIR, it was alleged that one

Mohd. Shabir, ASI of Police Station Thanamandi was accompanying SDPO Thanamandi along with some constables were doing their duty at

Village Saaj, the petitioners assemble there and started shouting slogans and the

police personals tried to pacify them, but the petitioners with common intention in order to stop the police personals from doing their official duty started pelting stones upon them.

In the said FIR it was further alleged that the petitioners injured the Mohd. Shabir, ASI, DDPO and other police personals and while attacking the Mohd. Shabir, ASI they took away his watch, purse containing Rs. 2150/- some papers and a Mobile Phone forcibly.Â

7. Through the medium of instant writ petition, petitioners seek quashment of FIR No. 78/2013, 79/2013 and 85/2013 on the grounds that all the three FIRs mentioned above have been registered with the mala-fide design and intention, in order to frame the petitioners in false and frivolous cases, so that they could not pursue the case of protection of their ancestral graveyard.Â Â

8. In support of his contention learned counsel for the petitioners relies upon a decision of Honâ??ble Supreme Court rendered in R. P. Kapur

Vs. State of Punjab, AIR 1960 SC 866, and State of Haryana vs. Bhajan Lal, 1992 Suppl (1) SCC 335 wherein some cases have been

summarized where inherent powers can and should be exercised to quash the proceedings.

9. I have considered the various aspects of matter and law on the point.Â

10. Now law is settled that where the allegations made in the First Information Report or the complaint, even if they are taken at their face

value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused; where the allegations in

the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence; where the

uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any

offence and make out a case against the accused; where there is an express legal bar engrafted in any of the provisions of the CodeÂ to the

institution and continuance of the proceedings; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is

maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal

grudge, the FIR/Complaint can be quashed.

11. These are not exhaustive grounds, but are certain important grounds, which empower this court to exercise jurisdiction vested u/s 561-A

Cr.P.C.Â

12. Now coming to present case, petitioners have sought quashment of three FIRs No. 78/2013 (u/s 341, 147, 382, 336 and 323 RPC); 79/2013

(u/s 341, 147, 382, 336 and 323 RPC); and 85/2013 (u/s 307, 336, 382, 353, 147 and 332 RPC), registered at three different occasions.Â

13. In FIR No.78 of 2013, it has been stated that complainant is the resident of village Rajal, Tehsil Nowshera, and is owner of a tractor.Â He

was invited by a person namely Mohd. Alias S/o Haji Mohd. Afzal caste Bhatti R/o village Sanj for the purpose of sowing the seeds of

Maize.Â On 31.05.2013, after sowing the seeds of maize, at about 7.30 Oâ?? clock he was returning back in his tractor and when reached

near Eid-Gah, Tanda, in the meantime accused persons namely Khadam Hussain, Forest Guard, S/o Wazir Hussain; Mohd. Ishfaq S/o Mohd.

Sadiq; Mohd. Maqsood S/o Mohd. Alam; Zakir Hussain S/o Mohd. Yousuf; Mohd. Rashid, Mohd. Rafiq, Mohd. Yousuf, sons of Mohd. Shaffi,

R/o Sanj with criminal intention stopped hisÂ way .Â The above named accused persons were having sticks and axes in their hands .Â Some

stones were also lying on the spot which were gathered by the accused persons.Â Â Accused persons started pelting stones on the

complainant, whereas accused Khadam Hussain, Forest Guard, started beating the complainant and gave blow on his head lathi.Â While

protecting his head the complainant was hit on his face by the accused persons.Â In the meantime, one among the accused persons took a

knife and attacked the complainant so as to kill him.Â He tried to attack on the stomach of the complainant.Â In order to save himself, the

complainant put his left hand, which got injured.Â The accused persons also pelted stones on the complainant.Â The accused persons

snatched Rs.4500/- and a watch from the complainant.Â They also threatened the complainant that they will kill him, if he will go to the police

station for filing the complainant.Â On raising hue and cry by the complainant, many people gathered there who protected himÂ from the

accused persons.Â Otherwise, the complainant would have been killed by the accused persons.Â On the basis of the aforesaid application

offence under Sections 336/147/382/341/323 RPC and FIR in this regard was registered in the concerned Police Station.

InÂ FIR No.79 of 2013 ,it has been stated that the complainant-Muneer Hussain presentedÂ a written application stating thereinÂ that he is

the resident of village Sanj and the accused persons namely Mohd. Rashif S/o Mohd. Shafi, Tahir Rashid S/o Mohd. Rashid, Zakir Hussain S/o

Mohd. Yousuf, Mohd. Ishfaq S/o Mohd. Sadiq, Khadam Hussain S/o Wazir Hussain, are also residents of the same village.Â Yesterday i.e.

02.06.2013 at about 6 p.m., the complainant along with his horses, which were loaded with sand, was going towards his house, the accused

persons with criminal intention stopped the way of the complainant and caught hold of him and started beating with legs and fists.Â They also

pelted stones on the complainant.Â They unloaded the sand from the horses and took away the saddles of the horses. They used un-

parliamentary language and also threatened him of dire consequences. They warned the complainant not to use the said path in future;

otherwise he will be killed by them. The accused persons are hard criminals.Â On the basis of the above mentioned application, offences under

Sections 147/336/382/341/323 RPCÂ were established .Â

InÂ FIR No.85 of 2013, it has been statedÂ that today constable Javed Ahmed bearing No.1359/R, with reference to the Report No.09 of

Daily Diary dated 06.06.2013, appearedÂ in the Police Station along with a docket in the name of ASI Mohd. Shabir.Â In said docket ,it has

been stated thatÂ on 06.06.2013, heÂ alongwith SDPO Thana Mandi along with other officials of the police stationÂ Nazir Ahmed ASI,

Tufail Hussain bearing No.271/N-HC, Sh. Mohd. Ayoub 64/N-HC, Sh. Zahid Hussain HC-6S/R, Tufail Hussain 752/SGct, Javed Iqbal 1359,

Mohd. Riaz 366/SPO, Mohd. Zaffer 107/SPO, were performing the duty at Sanj.Â

Deputy Commissioner Rajouri and Addl. DC Rajouri along with Tehsildar Thanamandi were coming there.Â They had called both the parties

on the spot, who were having a dispute with regard to the usage of the road.Â Both the parties were directed to follow the directions of the

High Court order with regard to the constructions of the road and grave yard.Â It was ordered that no damagesÂ should be causedÂ to the

grave yard.Â Various other people were assembled there and they listened the

directions of the Dy. Commissioner peacefully.Â Thereafter, the people dispersed from the spot.Â When the Dy. Commissioner, Addl. DC, Tehsildar and SDPO were coming down towards the road, the undersigned along with the other officials were performing their duties, in the meantime, one assembly which was consisting ofÂ Mohd. Shabir S/o Bagh Ali, Mohd. Khan S/o Mohd. Akbar, Abdul Rashid S/o Mohd. Shafi, Mohd. Rafiq, Mohd. Farooq, Mohd. Yousuf, sons of Mohd. Shaffi, Abdul Hussain S/o Hussain Baksh, Abdul Qayoom S/o Shah Mohd., Boustan Khan-Forest Assistant, Khadam Hussain, Mohd. Manzoor, sons of Wazir Hussain, Mohd. Maqsood, Mohd. Sadiq, sons of Mohd. Alam, Amjad S/o Khadam Hussain, Mansha Begum D/o Mohd. Shabir, Rafia Â BegumÂ W/oÂ LiaqatÂ Hussain,Â LiaqatÂ HussainÂ S/o Shabir, Shokat S/o Mohd. Sadiq, Mohd. Tazeem S/o Mohd. Shabir, Maria Begum W/o Abdul Rashid, Zulekha Bibi W/o Mohd. Yousuf, Nazakat Hussain S/o Mohd. Shabir, Zakir Hussain S/o Mohd. Yousuf, residents of Sanj came there .Â All these persons instigated other persons and they started raising slogans against the above mentioned authorities.Â The undersigned along with other officials tried to persuade these persons but were failed.Â All these persons with common and criminal intention gathered there and pelted stones at the undersigned and other officials at about 4 Oâ?? clock in order to kill them.Â They also pelted stones on the official vehicle of the Dy. Commissioner.Â Due to pelting of stones undersigned along with Khadam Hussain SPO 1225, were injured.Â Various other officials were also injured.Â The visiting Officers left the place safely towards their head-quarters.Â The above mentioned persons also snatched an amount of Rs.2150/- along with a wrist watch (casco) and a mobile along with Sim. On these facts FIR for commission of offences under Sections 382/332/336/147/307/353 RPC was registered.Â Â

14. From the perusal of contents of all these FIRs, it is evident that cases for cognizable offences are made out. When the cognizable offences are made out then this court cannot appreciate the facts and give finding that no case is made out at threshold.Â I have gone through the law cited, there is no dispute with regard to law, but it is not applicable in present set of case.Â

15. Police authorities have the statutory right and duty to investigate into a cognizable offence under the scheme of Code of Criminal Procedure.

This Court cannot interfere into domain of investigation of crimes by police in discharge of their statutory functions.Â There is a statutory right

on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial

authorities. The functions of the judiciary and the police are complementary not overlapping. The powers of investigation into cognizable

offences are contained in Chapter XIV of the Code. Section 154, which is in that Chapter, deals with information in cognizable offences and

Section 156 with investigation into such offences and under these sections the police has the statutory right to investigate into the circumstances

of any alleged cognizable offence. There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime

punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence

over which vests in the State Government. The executive, who is charged with a duty to keep vigilance over law and order situation, is obliged

to prevent crime and if an offence is alleged to have been committed, it is its bounden duty to investigate into the offence and bring the offender

to book.

16. Section 561-A Cr.P.C.Â deals with inherent powers of the High Court. It is sort of supervisory and regulatory powers over the conduct of

the lower criminal courts. It is a power vested in High Courts to intervene in any criminal proceedings and also include power to quash FIR,

investigation. Such powers can be exercised to secure ends of justice, prevent abuse of the process of any court and to make such orders as

may be necessary to give effect to any order under this Code, depending upon the facts of a given case. Though the jurisdiction exists and is

wide in its scope, it is a rule of practice that it will only be exercised in exceptional cases.Â

17. All the grounds taken in the petition have nothing to do with facts mentioned in the FIRs. In view of above, I do not find any reason to allow

this petition. It is dismissed accordingly. Interim stay, if any, is vacated. Already much time has elapsed, so concerned police is directed to bring

the investigation of the case to its logical conclusion within 60 days.Â