
(2022) 07 J&K CK 0060

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Cases No. 661, 1551, 1552 Of 2019

Mohd. Zulfkar And Others

APPELLANT

Vs

Union Territory Of J&K And Another

RESPONDENT

Date of Decision : 27-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 161, 482
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 323, 325, 352, 336, 451, 452, 504

Citation : (2022) 07 J&K CK 0060

Hon'ble Judges : Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Waheed Choudhary, Bhanu Jasrotia

Final Decision : Dismissed

Judgement

Vinod Chatterji Koul, J

1. By this petition filed under Section 482 Cr.P.C petitioners seek quashment of FIR No. 105 of 2019 dated 05.10.2019 (for brevity 'impugned FIR') registered with Police Station, Manjakote filed against the petitioners on the complaint filed by respondent no. 2 under Sections 452, 323, 147, 148 and 504 RPC and proceedings/investigation being conducted against the petitioners in the impugned FIR.

2. The case in brief is that the petitioner No. I is the son of Mohd. Shabir who has been disinherited by his father, namely, Hassan Mohd vide a duly registered deed of disinheritance dated 22.11.1994 from all his movable and immovable properties. It is claimed that the petitioner No. I has been duly adopted and brought-up by his grandfather, namely, Hassan Mohd who had three more sons, namely, Mohd.Rafiq, Pervaiz Ahmed and Mohd. Javed. An oral will is stated to have been made by the grandfather of the petitioner No. I by virtue of which the petitioner No. I has been held entitled to succeed to the movable and immovable

property of Hassan Mohd. in equal share with his three uncles named above. It is stated that the grandfather of the petitioner No. 1 expired few years ago and the names of the legal heirs of deceased- Hassan Mohd. have been brought on record in the revenue records and the petitioner No. 1 and his three uncles along with their respective families are enjoying the physical possession of the movable and immovable properties left behind by late Hassan Mohd. as per his will.

3. Learned counsel for the petitioners submits that the father of the petitioner no. 1 despite being disinherited hatched a criminal conspiracy with Sakina Bi and one Mohd. Sakoor and without informing the petitioner No. 1 and his three uncles attempted to alienate the immovable property in the shape of land measuring 12 Kanal 10 Marias comprised in kharsa no. 633 situated at Village Rajdhani, Tehsil Manjakote, District Rajouri along with a constructed house in favour of Mohd. Sakoor through the medium an agreement to sell dated 20.07.2019. When the petitioner No. 1 came to know about the said agreement to sell, he immediately filed a civil suit titled Mohd. Zulfkar vs. Mohd. Shakoore and others before the Court of learned Sub Judge /Chief Judicial Magistrate, Rajouri (for brevity 'Trial Court') in which an interim order dated 21.08.2019 came to be passed directing the parties to maintain status quo on spot with respect to the suit property. After service of the interim order of status quo upon the defendants-respondents herein, when the same was not complied with, the Trial Court vide order dated 03.10.2019 directed the SHO concerned to implement the Court order in its letter and spirit. It is further stated that as soon as family of Mohd. Rafiq uncle of the petitioner No. 1 came to know about the alienation of the aforesaid land by the father of the petitioner No. 1, they also filed a suit before the Court of learned Assistant Commissioner, Revenue with power of Collector Agrarian Reforms, Rajouri and the Commissioner vide order dated 28.10.2019 restrained the defendants therein from alienating the land and to make any change in the revenue records with respect to the suit property.

4. Learned counsel for the petitioners further submits that after service of two successive stay or orders Mohd. Shabir, Fatima Bi and others assaulted the petitioner No. 1, his wife and his other family members. The wife of petitioner No. 1 immediately reported the matter to the Police Station, Manjakote and an FIR No. 104 of 2010 dated 05.10.2019 against seven accused persons which includes husband of the respondent No. 2 came to be registered for commission of offences punishable under Sections 452, 147, 148, 336, 323 and 504 RPC and on the same day the accused-respondents herein in order to counter the aforesaid FIR registered against them, managed and maneuvered with the respondent No. 1 and succeeded in getting the petitioners involved in a highly baseless, false and frivolous impugned FIR No. 105 of 2019 dated 05.10.2019 with respect to the same cause of occurrence. It is stated that in the FIR no. 104 of 2019, the police after conducting the investigation has already presented a criminal challan against the accused persons before the competent Court of law and the accused persons are facing criminal trial in the said criminal challan. However, since the second FIR being a counter FIR has not been investigated nor the same has been

closed up till now.

5. The petitioner are aggrieved of the impugned FIR and challenge the same on the following grounds:-

(i) That the impugned FIR registered by the respondent No. 1 as against the petitioners is totally illegal contrary to the provisions of law and aimed at harassing and victimizing the petitioners;

(ii) The impugned FIR is highly motivated and has been got registered with oblique motive of harassing and blackmailing the petitioners. The complainant in order to save other accused persons against whom FIR No.104/2019 has been registered carved out a totally false and frivolous story against the petitioners and managed to get the impugned FIR registered against the petitioners;

(iii) That from the perusal of impugned FIR, it is apparent that the petitioners were present at their residence whereas accused-respondents herein persons entered their residence and assaulted and trespassed into their property. Therefore, the police has wrongly registered the impugned FIR no. 105 of 2019 against the petitioners invoking section 452 RFC against them;

(iv) That from the allegations as alleged in the FIR, no case much less a criminal case punishable under Sections 452, 323, 147, 148 and 504 RPC is made out against the petitioners as their involvement in the impugned FIR is sought to be made merely \ relying upon the version of the complainant in the impugned FIR;

(v) That the complaint on the basis of impugned FIR has been registered by the respondent is highly motivated, filed with ulterior motive and malafide consideration of harassing and blackmailing the petitioners;

(vi) That under the garb of the impugned FIR, the petitioners are being subjected to harassment and victimization by the police notwithstanding the fact that the petitioners have not committed any offence much less the offence as alleged against them. The entire story as alleged in the impugned FIR, if taken on its face value, prima facie proves to be wrong, incorrect and far away from truth and does not bring home the commission of offence punishable under section 452, 323, 147, 148 and 504 RFC;

(vii) That viewed from any angle, the impugned FIR has been registered against the petitioners with ulterior motive and malafide consideration, therefore, same cannot stand the test of judicial scrutiny. The impugned FIR, therefore, deserves to be quashed;

6. Status report has been filed by the official respondent, wherein it is stated that during the course of investigation, Investigating Officer visited on spot , prepared site plan, recorded the statement of witnesses under Section 161 Cr.P.C, after treatment statement of the complainant's has been recorded. It is stated that as per the investigation, it is found that the complainant and accused parties-petitioners herein are close relatives who have an old enmity over a piece

of land. On the day of occurrence alleged accused person-petitioners herein with criminal and common intention entered into the compound of complainant and beat her mercilessly and injured her seriously. As per investigation it was found that alleged accused persons, namely, Mohd Yousaf, Zumurad Ali, Arsha Bi, Arshed Mehmood, Abdul Rehman and Nahida Kouser (petitioners herein) have not found involved in the case and as per the statement of witnesses/ investigation offence under Section 452 RPC has not been proved against them, hence said offence has been deleted and as per medical report offence under Section 325/RPC has also been added in the case and offence under Sections 451/ 325/ 323/ 147/ 148/504/ RPC has been proved against the accused persons-petitioners herein. In the status report it is further stated that the Challan of the case has been prepared and passed by the Dy. Superintendent of Police Manjakote, however, same could not be produced before the Court as vide order dated 09.12. 2019 filing of the challan in the impugned FIR has been stayed by this Court.

7. Heard learned counsel for the parties and perused the material on record.

8. A perusal of the impugned FIR as well as status report shows that the offences under Sections 451/ 325/ 323/ 147/ 148/504/ RPC have been proved against the accused persons-petitioners herein. The challan has been prepared, however, in view of the interim order passed by this Court, same has not been filed before the competent Court.

9. It may not be out of place to mention here that the Supreme Court in State of Telangana v. Habib Abdullah Jeelani, reported in 2017 (2) SCC 779, has held that the powers under Section 482 Cr.P.C or under Article 226 of the Constitution of India, to quash the FIR, is to be exercised in a very sparing manner as is not to be used to choke or smother the prosecution that is legitimate. Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. Such power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Inherent powers in a matter of quashing FIR have to be exercised sparingly and with caution and only when such exercise is justifying by the test specifically laid down in provision itself. Power under Section 482 Cr.PC, is a very wide, but conferment of wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

10. In the instant case, investigation by the police is complete and the challan has been prepared. The allegations leveled in the challan regarding the commission of the alleged offence are required to be proved during the trial by adducing the evidence and the grounds taken by the petitioners in the instant petition can be taken in defence before the Trial Court.

11 Resultantly, interim direction dated 09.12.2019 passed by this Court is vacated and official respondents are at liberty to produce the challan before the competent Court in the instant case. The instant petition is, accordingly, dismissed.