

(2023) 03 J&K CK 0036

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 408 Of 2018

Mufti Shams Ud Din & Ors

APPELLANT

Vs

State Of J&K & Anr

RESPONDENT

Date of Decision : 27-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1989 — Section 561A
Code Of Criminal Procedure, 1973 — Section 155(2), 156(3), 161, 164A, 482
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 201, 295A, 323, 341, 379, 382, 504, 506

Citation : (2023) 03 J&K CK 0036

Hon'ble Judges : Mohan Lal, J

Bench : Single Bench

Advocate : Rahul Pant, Anirudh Sharma, Suraj Singh

Final Decision : Disposed Of

Judgement

Mohan Lal, J

1. Petitioners (i) Mufti Shams-ud-din S/O Sh. Abdul Gani Sheikh R/O Mahaore District Reasi, (ii) Ghulam Qadir S/O Sh. Abdul Gani Sheikh R/O Sarhbagga Tehsil Mahaore District Reasi, (iii) Shabir Ahmed S/O Ghulam Qadir R/O Sarhbagga Tehsil Mahaore District Reasi, (iv) Mohd Iqbal S/O Mohd Ramzan R/O Mahaore District Reasi, (v) Manzoor Ahmed S/O Abdul Rashid R/O Bathoi Tehsil Mahore District Reasi, (vi) Mohd Bashir S/O Abdul Gaffar R/O Mahaore District Reasi & (vii) Mohd Abass S/O Bashir Ahmed R/O Mahaore District Reasi, have invoked the inherent jurisdiction of this Court in terms of Section 561-A of Code of Criminal Procedure (now Section 482 Cr.pc) seeking quashment of FIR No. 45/2018 dated 29th June 2018 registered at Police Station Mahore for commission of offences punishable under Sections 379, 147, 506, 295-A, 323 RPC on the following grounds:-

(i) that the petitioners are respectable persons of the society as petitioner No.1 is

an Imam of the Bilal Masjid in village Mahore District Reasi, besides this he was elected as President of the Managing Committee on 29th May 2016 vide resolution passed by the residents of the locality constituted by the residents of the area for the construction of the aforesaid Masjid; petitioner No.2 is a retired Government Servant presently running a shop in Mahore and is not in any manner associated with the Managing Committee of the Masjid in question but regularly goes to the said Masjid for offering prayers as per the Muslim customs; petitioner No.3 is a teacher by profession, petitioner No.4 is a tailor by profession and also 2nd Imam of the Bilal Masjid apart from being a Mozin (person who performs Azan in the Mosque); petitioner No.5 is also a tailor by profession having his small shop near Bilal Masjid while petitioners No. 6 & 7 are also shopkeepers in habitation Jamlan which is at a distance of about 04 kms from Bilal Masjid;

(ii) that petitioner No.1 is a qualified Mufti apart from being Imam of the Bilal Masjid, as such, after the prayers he addresses the gathering in the mosque on every Friday for the religious discourse;

(iii) that in the recent past there was a controversy with respect to the statement made by Maulana Saad from Nizam-ud-Din Delhi, in which the decision of the Prophet Mohammad was criticized and throughout the Country there was a protest in various sections of the Muslim society including J&K, petitioner No.1 during the religious discourse on 8th June 2018 in the mosque had made a categoric statement that Prophet Mohammad had only followed the dictates of the Almighty; respondent No.2 along with others being the followers of Maulana Saad were looking for an excuse to settle the scores with petitioner No.1 as respondent No.2 was elected by the Ulemas to head the Managing Committee of Bilal Masjid who agitated the issue and even abused, manhandled petitioner No.1, and snatched his mobile phone; after the aforesaid incident of 8th June 2018 petitioner No.1 went to the Police Station Mahore to lodge an FIR against respondent No.2 and ten other persons who had manhandled him, one of the accused namely Mushtaq Ahmed Wani nominated by petitioner No.1, as accused No.1 in his complaint is the real brother-in-law of SDPO Mahore namely Muzib-ur-Rehman Bhat, similarly, accused No.5 namely Qamar Din S/o Hazar Din is the uncle of the SDPO Mahore, as such, despite request by petitioner No.1 as well as others no FIR was registered against the accused persons under the influence of said SDPO;

(iv) that ultimately with the intervention of the Chief Ministers' Grievance Cell, the FIR was registered by the Police Station Mahore on 29th June 2018 and Incharge Police Station Mahore on the said date asked petitioner No.1 to submit a fresh complaint, which was submitted by him and accordingly FIR No. 44/2018 dated 29th June 2018 was registered for the commission of offences under sections 382, 147, 504, 506 RPC pertaining to the incident of 8th June 2018 but the same has been registered on 29th June 2018 at 4.30 pm;

(v) that respondent No.2 with a view to pre-empt the registration of FIR,

apparently moved an application before the Magistrate for registration of FIR on 13th June 2018 and in pursuant to the order passed by the Magistrate on 13th June 2018, copy of the complaint was not given to the Police Station Mahore by respondent No.2 but it was retained by him, as he wanted to lodge the FIR only after the FIR at the instance of petitioner No.1 was registered, immediately after the FIR at the instance of petitioner No.1 was registered on 29th June 2018 at 4.30 pm, respondent No.2 moved an application marked by the Magistrate for investigation under section 156(3) CrPC on 13th June 2018 before the Incharge Police Station Mahore for registration of FIR, as such, FIR No. 45/2018 dated 29th June 2018 was registered at 15.10 pm;

(vi) that the registration of FIR against the petitioners is manifestly attended with mala-fides and same has been maliciously instituted with ulterior motives, petitioner No.1 in his capacity as a custodian in possession of the Masjid property cannot be said to have committed any theft of the said property, as such, false, incorrect and vague allegations have been leveled against them in order to carve out a ground for registration of FIR the averments thereof do not disclose commission of offences u/s 379, 295-A RPC;

2. Respondent No.1 in it's status report has contended, that on 29.06.2018 complainant namely Abdul Saman, (respondent No.2 herein) produced an application duly marked by the Ld. Munsiff JMJC Reasi in Police Station Mahore for lodging of FIR against the accused persons including the petitioners wherein it was alleged, that on 08.06.2018 during the meeting of Managing Committee of Bilal Masjid, he raised some queries from the members of said committee regarding the construction work of Bilal Masjid as well as transactions/details of account made during the period of said committee, instead of the reply to the said query, members of committee including the petitioners misbehaved with him as well as beat him mercilessly, on this complaint FIR No. 45/2018 u/ss 379, 147, 506, 295-A, 323 RPC was registered at Police Station Mahore and investigation conducted by SI Mohd Shafi. It is contended, that during investigation, I.O visited the spot and prepared the site plan, got recorded the statements of complainant and Abdullah S/O Jamal Din R/o Aadbis Tehsil Mahore under section 164-A CrPC before the court of law, obtained the certified copies of statements, accused persons/petitioners produced an order dated 07.07.2018 passed by this Court whereby the petitioners were bailed out with direction to cooperate with the I.O and further the Hon'ble Court has stayed the investigation, that in compliance to the directions dated 03.02.2022 answering respondent again started the investigation and during investigation, I.O recorded the statements of witnesses u/s 161 CrPC and it came to fore that on 08.06.2018, complainant namely, Ab Suban S/o Ab Aziz caste Shan R/o Jamslan at present Mahore, Reasi has gone to Bilal Masjid Sharief Mahore for offering prayer and at 3-4 pm when the complainant came out from the said Masjid and while going to Mahore Market the complainant was asked by Shamas-ud-Din about the details as well as accounts of Masjid Sharief and on this (i) Shamas-ud-Din, (ii) Ghulam Qadir sons of Ab Gani, (iii) Shabir Ahmed S/o Ghulam Qadir

caste Sheikh R/o Sadh Bagha Tehsil Mahore, District Reasi started to beat the complainant with fists and blows. It is more so contended, that on hearing hue and cry some persons came on spot and accused persons mentioned above fled away from the spot, during the course of investigation offence u/ss 295-A, 379, 147 RPC were deleted and Sections 341, 323, 506, 34 RPC proved and added against the aforesaid accused persons only and not against the other accused persons namely, (i) Manzoor Ahmed S/o Ab Rashid R/o Bathoi, (ii) Mohd Iqbal S/o Mohd Ramzan, (iii) Mohd Bashir S/o Ab Gaffar,

(iv) Mohd Abass S/o Mohd Bashir caste Kashmiri R/o Jamslan Tehsil Mahore, District Reasi, as such, their names were deleted from the said case FIR, the investigation has been completed in compliance to the directions of this Court dated 03.02.2020 in case FIR No. 45/2018 but due to the interim directions, the challan could not be produced in the court of law.

3. Mr. Rahul Pant, learned senior counsel for the petitioners, while recapitulating the grounds urged in the petition, has sought the quashment of impugned FIR by vehemently canvassing arguments, that the allegations leveled against the petitioners are totally baseless and malicious. It is argued, that the allegations made in the FIR even if are taken on their face value and accepted in its entirety do not prima facie constitute any cognizable offence much less any offence against the petitioners, despite such facts, the petitioners are being harassed by respondent No.2 by lodging the impugned FIR which is abuse of process of law only to wreck vengeance against the petitioners and to victimize them.

4. Mr. Suraj Singh, Ld. GA has sought dismissal of the petition by strenuously articulating arguments, that petitioners/accused have committed very heinous offences punishable u/ss 379, 147, 506, 295-A, 323 RPC for the allegations that on 08.06.2018 during the meeting of Managing Committee of Bilal Masjid, complainant/respondent No.2 raised some query from the members of said committee regarding the construction work of Bilal Masjid as well as transactions/details of account made during the period of said committee, petitioners/accused instead of replying to the said query, misbehaved with him as well as beaten him mercilessly. It is argued, that on the said complaint FIR impugned has been registered at Police Station Mahore, vide order dated 07.07.2018 petitioners have been granted bail, offences u/ss 341, 323, 506, 34 RPC have been proved against petitioners/accused, but due to the interim directions the challan could not be produced in the court of law.

5. I have heard Ld. Counsel for the parties, perused the material on record and gone through the relevant law on the subject matter. Inherent jurisdiction u/s 561-A (482) Cr.p.c may be exercised in a case where there is clear abuse of process of the court and when criminal proceedings are found to have been initiated with mala-fide intention to wreck vengeance on or to cause harm to the accused or when the allegations are absurd or inherently improbable, however, inherent jurisdiction has to be exercised sparingly. The power under Section 482 of CrPC can be exercised by the High Court to prevent the abuse of process of

the Court and otherwise to secure the ends of justice.

6. Hon'ble Supreme Court of India in a case titled "State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors" [1992 Suppl (1) SCC 335] while dealing with the scope and powers of High Court u/s 482 of Code of Criminal Procedure to quash the criminal proceeding for securing the ends of justice, while succinctly laying down the certain parameters, in paragraphs 102 & 103 held as under:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

7. In the case of "Pepsi Foods Ltd. & Anr vs. Special Judicial Magistrate & Ors", [(1998) 5 SCC 749] Hon'ble the Supreme Court while examining the extraordinary powers of High Court under Article 226 of the Constitution and also the inherent powers u/s 482 of the Code of Criminal Procedure and relying upon the ratio decidendi of Bhajan Lal's case (supra) held as under:

"22. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others vs. Bhajan Lal and others 1992 Supp (1) SCC 335, this court examined the extraordinary power under article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under Articles 226 and 227 of the constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers."

8. In "State of Andhra Pradesh Vs. Gourishetty Mahesh & Ors", [(2010) 11 SCC 226] Hon'ble Supreme Court has held, that though the powers possessed by the High Court under Section 482 CrPC are wide, however, such powers require care/caution in its exercise, the interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution, it was clarified that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it was open to the High Court to quash the same in exercise of inherent powers under Section 482

CrPC.

9. From the contents of the petition, it emerges out, that petitioners have sought quashment of FIR no. 45/2018 dated 29-06-2018 registered against them at Police Station Mahore (Reasi) by respondent No.2 for commission of offences u/ss 379, 147, 506, 295-A, 323 RPC. Record depicts, that petitioner No.1 has already got FIR No. 44/2018 dated 29-06-2018 registered against respondent no.2 and others for commission offences u/ss 382,147,504,506, 201 RPC with Police Station Mahore (Reasi) and the charge sheet of said FIR has been produced in the court of JMIC Mahore on 25-09-2018. Status report filed by respondent No.1 clearly demonstrates that during investigation of FIR No.45/2018 registered by respondent No.2 against petitioner No.1 and others, I/O has only found the complicity of three petitioners viz; Petitioner No.1, 2&3 namely Mufti Shamas-ud-Din, Ghulam Qadir & Shabir Ahmed for commission of offences u/ss 341,323,506,34 RPC, while against rest of the petitioners viz; petitioners 4,5,6&7 namely Mohd Iqbal, Manzoor Ahmed, Mohd Bashir & Mohd Abass no offences have been proved. It is apt to reiterate here, that offences proved against petitioners 1,2&3 in FIR 45/2018 relate to sections 341,323,506,34 RPC out of which offences u/s 323 & 506 are non-cognizable while only offence u/s 341 RPC relating to wrongful restraint is cognizable. The allegations in FIR 45/2018 are so absurd and inherently improbable as only minor offences u/ss 341/323/506/34 RPC except offences u/ss 379, 147, & 295-A RPC have been prima-facie established against the petitioners, the said FIR is therefore, manifestly attended with mala-fide and ulterior motive for wrecking vengeance as counter blast to the already registered FIR No.44 against respondent No.2. Therefore, by invoking its inherent powers u/s 482 of Cr.pc and to prevent the abuse of process of law or to secure the ends of justice, instant petition is allowed, and the impugned FIR No. 45/2018 dated 29th June 2018 registered at Police Station Mahore against petitioners alongwith all the consequential proceedings if any arising there from, hereby, stand quashed. Interim order of this court dated 07-07-2018 also stands vacated. Copy of this order be forthwith provided to respondent No.1 for information and compliance.

10. Disposed off accordingly.