
(2022) 08 J&K CK 0057

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Cases No. 177 Of 2018

Muzamil Rahim Allie & Ors

APPELLANT

Vs

State Of J&K & Ors

RESPONDENT

Date of Decision : 29-08-2022

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 148, 297, 307
Code Of Criminal Procedure, 1973 — Section 161, 164

Citation : (2022) 08 J&K CK 0057

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Q. R. Shamas, Insha Haroon, Avees Geelani, Sajad Ibrahim

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioners have challenged FIR No.48/2018 for offences under Section 147, 148, 297 and 307 of RPC registered with Police Station, Pattan.

2) It appears that on 09.03.2018, inhabitants of Village Mirgund through respondent No.5/complainant lodged a report with the police alleging therein that on the said date the petitioners herein, armed with lathies, axes and knives, entered the graveyard measuring 11 kanals 10 marlas of land situated at Village Mirgund whereafter they started construction of a tin shed over there thereby injuring the feelings of the community. It was further alleged that the petitioners attacked the complainant and other villagers present over there and one Manzoor Ahmad Wani sustained serious injuries. On the basis of this report, the impugned FIR came to be registered and the investigation was set into motion. During investigation of the case, the statements of the witnesses under Section 161/164 C. P. C were recorded and the weapons of offences i.e. lathies, spades etc. were seized. According to the prosecution, the offences under Section 147, 148, 297 and 307 RPC stand established against the petitioners.

3) It has been contended by the petitioners that as per the revenue record, the land measuring 11 kanals 10 marlas falling under Khasra No.458 situated at Village Mirgund is shown in possession of Muslim community and out of this land, 11 kanals 08 marlas are being used as graveyard. It is submitted that balance 02 marlas of land is recorded in the name of one Lala S/o Lassi Reshi, who has donated the said land for the purposes of construction of a mosque. It is alleged that one group of the villagers is resisting the construction of mosque over there and to resolve the dispute, the proceedings were initiated before the Assistant Commissioner, Revenue, Baramulla. It is averred that the petitioners filed a writ petition bearing OWP No.717/2017 before the High Court and in the said writ petition, a direction was issued to Deputy Commissioner, Baramulla, to get the land in question demarcated.

4) It is further averred that the complainant/respondent No.5 filed a suit before learned Sub Judge, Pattan, seeking a permanent injunction against the petitioners. It is submitted that vide order dated 07.03.2018 passed by learned Sub Judge, Pattan, it was observed that 02 marlas of land are not included in the graveyard.

5) Two more writ petitions are stated to have been filed by the complainant party in which certain orders came to be passed by this Court. It is submitted that in OWP No.561/2018, this Court directed appointment of a Commissioner to ascertain as to whether mosque is existing on spot in Survey No.458. According to the petitioners, the report of the Commissioner is in their favour.

6) It is submitted by the petitioners that because the complainant party did not succeed in obtaining favourable orders, they have lodged the impugned FIR, which is absolutely false and frivolous.

7) The official respondents have filed their reply in which they have reiterated the contents of the impugned FIR and they have submitted that after investigation of the case, offences under Section 147, 148, 297, 307 RPC stand established against the petitioners.

8) I have heard learned counsel for the parties and perused the record of the case.

9) According to the petitioners, they have not trespassed into the graveyard. It is being submitted that the site on which the mosque is being constructed is outside the premises of the graveyard, as such, offence under Section 297 of RPC is not made out against them.

10) The question whether or not the site on which the petitioners are alleged to have entered is within the premises of the graveyard can be determined only during the investigation of the case but prima facie the documents placed on record by the petitioners tend to show that the parties have been directed to maintain status quo on spot. Even though the learned Sub Judge, Pattan, has, in his order dated 07.03.2018, observed that 02 marlas of land are situated outside

the premises of the graveyard, yet the said order has been challenged by the complainant party by way of an appeal before the learned District Judge, Baramulla. The petitioners have placed on record a copy of order dated 19.03.2018 passed by the appellate court whereby the order passed by Sub Judge, Pattan, has been kept in abeyance and the parties have been directed to maintain status quo on spot.

11) The petitioners have also placed on record a copy of order dated 22.03.2018 passed by this Court in OWP No.445/2018 filed by the complainant party, whereby it has been directed that no construction activity is permitted over the land measuring 11 kanal 10 marlas falling under Survey No.458 situated at Mirgund, meaning thereby the construction activity in whole of the land including 02 marlas, which according to the petitioners is situated outside the graveyard, has been stopped. In view of these orders, prima facie, it appears that the entry of the petitioners in the land in question cannot be termed as legal and any construction activity on the spot by the petitioners amounts to violation of court orders.

12) Apart from the above, the statements of witnesses recorded during investigation of the case tend to show that the petitioners entered the land in question armed with lathies, spades and other implements, whereafter they gave a beating to some persons from the complainant party. The occurrence, as per the statements of the witnesses has taken place on 09.03.2018. One of the witnesses, PW Haji Mohammad Assadullah, whose statement has been recorded under Section 164 of Cr. P. C, has clearly implicated the petitioners and he has stated that they entered the land in question and they gave a beating to the members of the complainant party. He has gone on to state that the petitioners are intending to construct a shed in the premises of the graveyard and that one Manzoor Ahmad Wani was given a severe blow on his head, which resulted in grievous injuries to him. A perusal of the Case diary shows that injured Manzoor Ahmad Wani has been subjected to medical examination and as per the medical report, he was found to have sustained multiple small abrasions over face and scalp (frontal side) though the injuries sustained by the said person are stated to be simple in nature.

13) From the foregoing analysis of the material collected during the investigation of the case, it appears that the petitioners entered into the land in question armed with lathies and other agricultural implements and they gave beating to the members of the complainant party, which resulted in injuries to some of them. Thus, cognizable offences are clearly disclosed against the petitioners.

14) It is a settled law that when the allegations made in the FIR are substantiated by the material collected by the investigating agency during the investigation of the case and the same discloses commission of cognizable offences, the FIR and the criminal proceedings cannot be quashed. The investigating agency has a statutory duty to investigate an FIR and take the investigation to its logical conclusion. Interference in the statutory power of the

investigating agency by the High Court has to be in rare cases. The instant case does not fall in such category. Therefore, in the instant case, this Court would not be justified in quashing the impugned FIR and the proceedings emanating therefrom.

15) For the foregoing reasons, I do not find any merit in the instant petition. The same is, accordingly, dismissed.

16) The Case Diary be returned to the learned counsel for official respondents.