

(2021) 04 J&K CK 0066

In the Jammu And Kashmir High Court

Case No : Criminal Appeal (D) No. 11 Of 2020, Criminal Miscellaneous No. 723, 724 Of 2020

National Investigation Agency

APPELLANT

Vs

Owais Amin @ Cherry & Ors

RESPONDENT

Date of Decision : 27-04-2021

Acts Referred:

National Investigation. Agency Act, 2008 — Section 5, 6, 8, 21
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 121, 121A, 122, 124A, 306, 307, 309, 411
Unlawful Activities (Prevention) Act, 1967 — Section 15, 16, 18, 20, 23, 38, 39, 45(1)
Explosive Substances Act, 1908 — Section 4, 5, 7
Jammu And Kashmir Public Property (Prevention Of Damage) Act, 1985 — Section 4
Code Of Criminal Procedure, 1973 — Section 4(e), 196, 196A, 196B

Citation : (2021) 04 J&K CK 0066

Hon'ble Judges : Puneet Gupta, J;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : Vishal Sharma, S.S. Ahmed

Final Decision : Disposed Of

Judgement

1. This is an appeal under Section 21 of the National Investigation Agency Act, 2008 against the order dated 06.03.2020 passed by the learned Special

Judge, NIA, Jammu to the extent that the accused-respondents herein have been discharged under Section 120-B, 121, 121-A & 122 of the Ranbir

Penal Code (for short "RPC") in FIR No. RC-03/2019/NIA/JMU.

2. Further the challenge in the present appeal also is to the extent that even when the chargesheet presented before the court contained offences

under Section 306 and 411 RPC as also Section 39 of the Unlawful Activities (Prevention) Act, yet the trial court at the stage of framing of charge

failed to record any reason for not framing of charge under the aforementioned

sections.

3. Briefly stated the material facts are as under:

4. An FIR bearing No. 39/2019 came to be registered at Police Station, Banihal District Ramban under Sections 120-B, 121, 121-A, 124-A and 307

RPC as also Section 4 and 5 of Explosive Substances Act and Sections 15,16, 18 and 20 of Unlawful Activities (Prevention) Act, 1967. The facts

leading to the registration of the FIR were that on 30.3.2019 at around 10.15 hrs, a Santro car with registration No. DL-5917 laden with explosive

substances was driven by respondent No. 1-Owais Amin @ Cherry and that the CRPF convoy, which was on its way from Srinagar to Jammu, was

attacked by the said respondent by exploding the IED which was placed in the said car. The explosion on account of IED blast damaged the rear

glass of the bus and that the santro car laden with explosive substance got burnt after the explosion.

5. It is stated that the Ministry of Home Affairs (MHA), Government of India, in view of the gravity of the offences, its pan-Indian and transnational

linkages and in exercise of the powers conferred under sub section 5 of Section 6 read with Section 8 of the National Investigation Agency Act, 2008,

vide its Order dated 12.4.2019 directed the National Investigation Agency to take up the investigation of FIR No. 39/2019. Based upon the

aforementioned authorization, the NIA re-registered the FIR as RC-03/2019/NIA/JMU. After completion of the investigation, a charge sheet was

presented before the Learned Special Judge, NIA, Jammu under Sections 120-B, 121, 121-A, 122, 306, 307, 309 and 411 of RPC, Sections 3 and 4 of

Explosive Substances Act, Section 4 of J&K Public Property (Prevention of Damage Act), 1985 and Sections 16, 18, 20, 23, 38 and 39 of Unlawful

Activities (Prevention) Act.

It is further stated that before filing the chargesheet, sanction for prosecution under Section 45(1) of Unlawful Activities (Prevention) Act, 1967 and

under Section 7 of the Explosive Substances Act, 1908 was taken from the competent authority.

6. It is urged that a complaint under Section 196 and 196-A of the CrPC was forwarded to the competent authority i.e., District Magistrate, Ramban.

It is further urged that the court below ordered the dropping of charges under Section 120-B, 121, 121-A & 122 RPC and not only that, no reasons

were given for not framing the charges under Section 306 and 411 of the RPC as also Section 39 of the Unlawful Activities (Prevention) Act.

7. On a perusal of the order impugned, it can be seen that the court below discharged the accused-respondents in the aforementioned offences on the following grounds:

(i) That no cognizance could be taken in the absence of a complaint by the District Magistrate as defined under Section 4(e) of the CrPC and in terms of the mandate of Section 196-A of the CrPC;

(ii) That there was no preliminary investigation got conducted by the District Magistrate in terms of Section 196-B of the CrPC;

(iii) That there was non-compliance of the provisions of Section 196-A of the Code of Criminal Procedure as complaint of the District Magistrate

contained no reference that the District Magistrate had been authorized or empowered by the Govt. to file the complaint.

8. Insofar as the ground 1 reflected hereinabove is concerned, we have dealt with this issue in case titled National Investigation Agency vs. Mushtaq

Ahmad Malik & ors, CrIA (D) No. 10/2020. Needless to say that in the said judgment, we have clearly held that there was no particular form

prescribed for filing a complaint nor did the Code of Criminal Procedure laid down how the same has to be drafted and all that necessary to do was

that the complaint must disclose commission of an offence and contain necessary facts for a Magistrate to take action. Reliance was placed on the

Apex court judgment in Bhimappa Basappa Bhu Sannavar v. Laxman Shivarayappa Samagouda & ors, 1970(1) SCC 665.

9. In the present case, communication dated 20th of September, 2019 addressed by the District Magistrate, Ramban to the learned Special Judge,

NIA, Jammu fulfils all the requirements of a complaint and therefore we cannot persuade ourselves to accept the view of the learned court below on

this issue.

10. The second ground on the basis of which the learned Special Judge, NIA Court discharged the accused for offences under Section 120-B, 121,

121-A, 122 and 411 RPC appears to be that there was no preliminary investigation ordered by the District Magistrate in terms of Section 196-B of the

CrPC. Even this issue has been dealt with by us in NIA vs. Mushtaq Ahmed Malik's case (CrIA(D) No. 10/2020) in which we have held thus:

On a perusal of Section 196-B, it can be seen that it vests in the District Magistrate the discretion to order a preliminary investigation by a police officer not below the rank of an Inspector in the case of any offence in respect of which offence Section 196 or 196-A apply.

By adopting the rule of literal interpretation as regards the interpretation of statutes, the word "may" figuring in Section 196-B to our mind cannot be construed to mean as "shall". In any case, Section 196-B cannot be construed to mean that an investigation initiated other than by way of a direction emanating from the District Magistrate, could never become the basis of a complaint by the empowered officer in terms of Section 196-A.

11. Following the ratio in the Mushtaq Ahmed's case, we, therefore hold that it was not at all mandatory for the District Magistrate to necessarily order a preliminary investigation by a police officer before the presentation of the chargesheet before the NIA court.

12. On a perusal of the order impugned, it can be seen that the court below proceeded to hold that there was nothing on record which could suggest

that the District Magistrate Ramban had been authorized by the Govt to file the complaint or that he was empowered to do so and therefore, it was

held that no cognizance could be taken for commission of offences under Section 120-B of RPC on account of non-compliance of the provisions of

Section 196-A of the CrPC. Section 196-A of the CrPC is reproduced hereunder:

"Section 196-A of the Code of Criminal Procedure, inter alia envisages that no court shall take cognizance of the offence of criminal conspiracy

punishable under section 120-B of the Ranbir Penal Code, in a case where the provisions of Section 196 apply, unless upon a complaint made by or

under the authority from the Government or some officers empowered by the Government in this behalf."

13. With a view to verify as to whether the District Magistrate, Ramban had been authorized or empowered by the Govt. to file the complaint, Mr.

Sharma, learned ASGI, was asked a specific question to which he answered in the negative. If that be so, then the order impugned in the present

appeal, holding that the court could not take cognizance for those offences, which required such an authorization by the Govt. cannot be faulted. We,

therefore, hold that the order impugned to that extent is perfectly legal and cannot be interfered with. However, we find from the order impugned that

there is no discussion at all with regard to offences under Section 306 and 411 RPC and section 39 of the Unlawful Activities (Prevention) Act, 1967.

We, therefore, remand this matter to the court below for passing appropriate orders in regard to offences under Section 306 and 411 RPC and section

39 of the Unlawful Activities (Prevention) Act, 1967.

14. Disposed of accordingly.