(2018) 08 J&K CK 0056

In the Jammu And Kashmir High Court

Case No : Criminal Appeal No. 231 Of 2016

Nisar Ahmad @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 24-08-2018

Acts Referred:

Code of Criminal Procedure 1973, — Section 173, 482, 561A
Jammu and Kashmir State Ranbir Penal Code, 1989 — Section 34, 415, 420
Indian Penal Code, 1860 — Section 161, 165
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2018) 08 J&K CK 0056

Hon'ble Judges : M. K. Hanjura, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. In this petition, filed under Section 561-A of the Code of Criminal Procedure, the petitioner craves the indulgence of this Court in quashing the FIR

bearing No.28/2016, registered on 21.05.2016, at Police Station Nishat, for the commission of an offence punishable under Section 420 read with

section 34 of the Ranbir Penal Code.

2. Before adverting to the grounds urged by the petitioner for seeking the aforesaid relief the contents of the FIR require to be examined and

evaluated. The FIR delineates that on 21.05.2015, Mushtaq Ahmad Zaroo M/s Khazir Sons Brane S/o Gh. Mustafa Zaroo R/o Brane Nishat, moved a

complaint before the authorities of Police Station Nishat, Srinagar, alleging therein that he has been duped and deprived of a sum of Rs. 01 Crore and

71lacs during the period commencing from May to September 2015 by Farooq Ahmad Kotroo and his accomplices, who took money from him in parts

under various pretexts, but did not return the same. He (Farooq Ahmad Katroo) took umbrage under the plea that he has paid the money received from him to some international dealers, dealing with antique stones. After the passage of some time, Farooq Ahmad Kotroo called the complainant to

his houseboat, â??King of Seaâ? situate at Dal Lake and told him that the antique stones which he had purchased out of his money have disappeared

from his locker and since he had paid for the products, therefore he cannot return the money received by him and that he should not pursue any legal

remedy. It is further stated that Farooq Ahmad Kotroo told him that he has borrowed a lot of money from some others also and he takes full

responsibility of returning it in the coming year. The amount due to be paid to him had by then swelled upto Rs.1,48,00,000 which he had drawn from

his companies HDFC Bank account Nishat Branch. It is further contended that considering his background the complainant doubted his intention and

therefore, he got in touch with his accomplices and pleaded before them that they should return the money who in turn assured him that in the coming

days they will sell their assets and ventures which are stuck with some party at Mumbai/Delhi for the release of which they require same money.

Considering this the complainant deposited an amount of Rs. 23,00,000/-Â in Munishâ??sÂ account from his companies account opened at HDFC

Bank, Nishat Branch. Subsequently he (Munish) backed out by saying that it will take him more time than expected to ward off the liability. On this

complaint of the complainant a case bearing FIR No: 28/2016 for the commission of an offence under Section 420 read with section 34 RPC came to

be registered at Police Station Nishat as a consequence of which the investigation ensued.Â Â

3. Aggrieved by the registration of the FIR, numbered above the petitioner has challenged its vires on the grounds, inter alia, that the contents of the

complaint, FIR and the Police report submitted in the bail application, nowhere demonstrate that the matter is of a criminal nature. Having regard to

the facts and the circumstances of the case, it is a civil dispute for which the police cannot take cognizance. The complainant, Mushtaq Ahmad Zaroo,

being an influential person implicated the petitioner and others in a false and frivolous criminal case bearing FIR No. 28/2016 under Section 420/34

RPC registered at Police Station Nishat. It is also stated that after the perusal of the report filed by the police authorities of police station, Nishat,

Srinagar, the trial Court has released the petitioner on bail.Â

4. The respondent No. 1, to counter the pleadings of the petitioner has vehemently contended that the complaint filed by the answering respondent

shows that the accused-petitioner had taken a huge amount of Rs. 01 Crore and 17.00 lacs from the complainant for providing customers, who could

purchase handicraft items and antiques from the respondent/complainant.

The accused No. 1 provided customers, but after some time he stopped doing so. He took shelter under the plea that the same shall be released on a

payment of Rs. 23 lacs more, which he transferred into his account but still then he did not comply with the terms of the Oral Contact and avoided its

compliance dishonesty, which caused doubt in the mind of the answering respondent about his bona fides, for which a criminal action has been

initiated. It is also stated that the FIR cannot be quashed at the threshold without allowing the statutory investigation to be conducted, which will

remove the chaff from the grain and will make the things clear. The report submitted by the respondent No. 1, SHO Police Station, Nishat, Srinagar,

reveals that after the investigation of the case a charge sheet has been laid on 26.12.2017 against the petitioner and the other co-accused in terms of

Section 173 Cr. PC before the Court of learned Sub-Registrar, Srinagar, which amply proves that there is sufficient material for the learned

Magistrate to proceed in the matter and to take an appropriate action in the matter as warranted by law.

5. Heard and considered.

6. Learned counsel representing the petitioner has argued that there is not even a whisper in the F.I.R. to state that the culpability of the petitioner has

surfaced in the matter. Per contra the Learned counsel representing the respondents have argued that the High Court should refrain from passing any

order, when the entire facts of the case are incomplete and hazy and when the evidence has not been recorded. Such, issues could only be seen in

their correct perspective after a full dressed trial.Â In case of an offence of â?? Cheatingâ? as in the present case the ingredient of inducement has

to be understood in the sense of the non-disclosure of relevant information by the accused which has to be treated as misrepresentation of facts

leading to deception. In the instant case non-disclosure of the fact that the sale of the antiques is not legally possible and permissible amounts to

withholding of the facts causing vital damage amounts to cheating.Â

7. The law in that in the exercise of this wholesome power, the High court is entitled to quash a proceeding if it comes to the conclusion that allowing

the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

The saving the High Courtâ??s inherent powers, both in civil and criminal matter is designed to achieve a salutary public purpose, which is that a

court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a

lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing

the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according

to laws made by the legislature. The compelling necessity for making these observations is the without a proper realization of the object and purpose

of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to

appreciate the width and contours of that salient jurisdiction.

8. In the law laid down by the Supreme Court in the case of State of Haryana and others v. Bhajan Lal and others, reported in 1992 Supp (1) SCC

335, the Supreme Court has elaborately considered the scope of Section 482 Cr. P.C. In this case the Supreme Court had the occasion to determine

the power of the High Court to quash the entire criminal proceeding including the FIR.Â The case under scrutiny arose out of an FIR registered

under Sections 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947.Â After noticing the earlier pronouncements on the subject,

the Supreme Court detailed with lace certain categories of cases by way of illustration where power under Section 482 of the Cr. P.C. can be

exercised to prevent the abuse of the process of the Court or secure the ends of justice.Â Paragraph 102 of the judgment provides seven categories

of cases where the provisions of Section 482 Cr. P.C. can be invoked and these are extracted below:Â

â??i) 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.Â Â

ii) 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 Section 156(1) of the Code except under an order of a Magistrate within the purview of Section

155(2) of the Code.Â Â

iii) 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.Â Â

iv) 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 any order of a Magistrate as contemplated under Section 155(2) of the Code.Â Â

v) 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.Â Â

vi) 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.Â Â

vii) 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.â??

9. Testing the instant case on the standards of the law laid down above which are illustrative and not exhaustive what requires to be looked into at the

first blush is whether the allegations made in the first information report even if they are taken at their face value and accepted in their entirety do

prima facie constitute any offence or make out a case against the Petitioner. The accusation leveled against the petitioner as is repeated and reiterated

here is that he has committed an offence under section 420 of Ranbir Panel Code. Section 420 of the Ranbir Panel Code provides that whoever

cheats and thereby dishonestly induces the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Cheating is defined by section 415 of

RPC which imparts that Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any

person, or to consent that any person shall retain any property or intentionally induces the person so deceived to do or omit to do anything which he

would not do or omit if he were not so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind,

reputation or property, is said to â??Cheatâ??.Â

10. It is settled law, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest

intention at the time of making the promise or representation. On a failure to keep up the promise subsequently, such a culpable intention right at the

beginning that is at the time when the promise was made cannot be presumed. It is also trite in law that failure to keep up the promise subsequently,

cannot bring the mischief of the accused within the definition of section 420 RPC.Â In order to establish the offence of cheating the complainant is

required to show and indicate that the accused had fraudulent and dishonest intention at the time of making the promise or representation.

11. Looking at the instant case from the above perspective there is not even a whisper in the FIR to state that the petitioner had any role to play in the

transaction that occurred between the complainant and Farooq Ahmad Kotroo. The complainant has not made even a murmur to state that the

petitioner at any point of time entered into any deal with him. It is only Farooq Ahmad Kotroo and one Munish whom the complainant has named to be

persons who duped and deprived him of a large chunk of money. Had the petitioner any role to play in the transaction the complainant would not have

maintained a discreet silence about it in the F.I.R. Element of dishonest intention at the beginning of the transaction is a Sine-Qua-Non for attracting

section 415 of RPC which is completely hooky and missing in the FIR insofar as it relates to the petitioner. The complainant has not stated it in the

FIR that the petitioner fraudulently and dishonestly induced him to deliver any money. Therefore testing the case of the petitioner on the anvil of the impugned FIR it is manifestly clear that he cannot be involved in a row on the basis of the language in which section 415 RPC is couched.Â The FIR

does not disclose any of the ingredients of the offence of cheating so for as it relates to the case of the petitioner, and therefore, no action can be

maintained as against him.Â

12. The law is that Section 561-A Cr. PC envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give an

effect to an order under the code (ii) to prevent abuse of process of Court and (iii) to otherwise secure the ends of justice. It is neither possible nor

desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can

provide for all cases that may possibly arise. Courts, therefore, have the inherent powers apart from express provisions of law which are necessary

for proper discharge of functions and duties imposed upon them by law. Â Courts are invested with all such powers as are necessary to do right and

to undo a wrong in the course of administration of justice on the principle of Quando lex aliquid alicui concedit, conceditur et id Sine quo res ipsa esse

non protest (When the law gives the person anything, it gives him that without which it cannot exist).Â

13. Viewed in the context of all that has been said and done above, the petition of the petitioner merits to be allowed, as a consequence of which the

FIR No. 28/2016 registered by the respondent No.1, i.e., the State of Jammu and Kashmir through SHO, Police Station, Nishat, Srinagar, as against

the petitioner for the commission of an offence punishable under Section 420, read with Section 34 RPC is quashed including all other proceedings

emanating therefrom.