
(2007) 06 J&K CK 0002
In the Jammu And Kashmir High Court

Nusrat Jan and Another	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 08-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155, 156, 173, 178, 482

Citation : (2007) 2 JKJ 509

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hakim Imtiyaz Hussain, J.—On 24.10.2006 Respondent Mohammad Bakir Malik S/o Gh. Hussani Malik R/o Gangoo Pulwama Tehsil and

District Pulwama filed a report with the Police Station, Pulwama stating therein that on 22.10.2006 his daughter namely Nusrat Jan @ Nuzhat Jan

was abducted by one Gulzar Ahmed Reshi S/o Gh. Ahmad Reshi R/o Drusoo Pulwama Tehsil & District Pulwama (Petitioner No. 2). He prayed

for an action in the matter and also for the recovery of the girl. On this report FIR No. 383/06 was registered in the Police Station, Pulwama u/s

366 RPC and the investigation started which was assigned to Head Constable Gh. Rasool.

2. The petitioners have through the medium of the present petition prayed for quashment of the said FIR on the ground that they, being major have

out of their free will married and that it being Intercast marriage relatives of the petitioners are harassing them with the aid of the local police. In

support they have placed on file a copy of the ""Nikahnama"" alleged to have been executed by them. They have also placed on file a copy of the

interim direction passed by Munsiff, Pulwama in a Civil Suit title Nusrat Jan v. Mohd. Baqir Malik and Ors. dated 07.02.2007 filed by them in the

said Court. A copy of the bail order in favour of the petitioner No. 2 granted by Judicial Magistrate 1st Class, Pulwama has also been placed or.

file to show that the Police concerned has implicated father of petitioner No. 2 namely Gh. Ahmed Reshi as accused in the case.

3. On 07.05.2007 when this case was taken up for consideration the Court directed stay of proceedings till further orders.

4. Respondent No. 4 has vide CMP No. 97/07 prayed for vacation of the interim order on the ground that the case is under investigation and that

the petitioner No. 1 has been kept in wrongful confinement by petitioner No. 2. He has further stated that the petitioner No. 1 was suffering from

serious mental problem at the time she was abducted by petitioner No. 2.

5. The respondents have not, however, filed separate objections but have vehemently resisted this petition when it was taken up for consideration.

6. Heard. I have considered the matter.

Learned counsel for the petitioner would state that the petitioners are major and have out of their free will married and that petitioner No. 1 is now

in family way also. He states that both the petitioners are presently residing at Jammu and their marriage being Intercast marriage, they apprehend

that respondents may not harass them and pressurise them. During arguments the learned Counsel, however, stated that he was prepared to

produce the girl before the police provided due security is provided to her. Learned Counsel for the petitioner has relied on Lata Singh Vs. State

of U.P. and Another, , Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, Minoo F. Bulsara Vs. Hindustan

Petroleum Corporation and another, and State of West Bengal and Others Vs. Swapan Kumar Guha and Others, .

7. Mr. M. A. Rathore, AAG appearing for the official respondents would oppose the present petition on the ground that the case was at the

threshold of the investigation and that the petitioners have by filing the present petition stalled the process of law and that if the petitioner No. 1

has gone with the petitioner No. 2 out of her free will, the proper course is to appear before the investigating officer and make a statement so that

the case could proceed accordingly.

8. Mr. M.Y. Bhat appearing for respondent No. 4 has referred to various annexures to show that the petitioner No. 2 has in gross violation of the orders of the Court of Principle District & Session Judge, Pulwama dated 01.05.2007 not co-operated with the investigating officer. The said order pertains to the release of the petitioner on anticipatory bail, one of the conditions in the bail order being that he shall make himself available before police as and when required to assist and co-operate with the police during investigation but the petitioner instead of co-operating with the police ran away and is now residing at Jammu where according to the learned Counsel he has kept Petitioner No. 1 in wrongful confinement.

Various annexures have been placed on file to show that the petitioner was suffering from neuro problem and is under the treatment of Dr. M.

Aslam. Ld. Counsel has relied on A.V. Mohan Rao and Another Vs. M. Kishan Rao and Another, M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar

and another, Om Prakash Singh and Another Vs. State of U.P. and Others, Bajrang Lal and Another Vs. State of Rajasthan, M/s. Jayant Vitamins

Ltd. Vs. Chaitanyakumar and another, Jiwat Ram and Another Vs. The State of Rajasthan and Another,

9. The law relating to exercise of inherent powers u/s 561-A of the Code of Criminal Procedure, to quash a First Information Report duly

registered by the Police under the provisions of the Code, is well settled now. While exercising the powers the Court is required to see whether on

the alleged facts in the F.I.R., any offence is made out or a case is made out against the accused. If the facts mentioned in the report prima facie

disclose cognizable offence, then the High Court is not required to look into the veracity, reliability, sufficiency and adequate proof of the facts

alleged and to make a meticulous scrutiny and look into the material produced by the accused in his defence. To look into the veracity of the

complaint and consider the value and veracity of the documents produced by the complainant or relied upon by the accused is the job of the

Investigating Officer. The police has a statutory right to investigate into the circumstances of alleged cognizable offence and this power can be

interfered with by the Court only when the allegations made in the Report, 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. Inherent powers of the High Court recognised in Section 482 of the

Code are reserved to be used ""to give effect to any orders under the Code"", or ""to prevent abuse of the process of any Court or otherwise to

secure the ends of justice"". If a cognizable offence is made out from the report, it is in the interest of justice to allow the police to do its job

assigned under the Code. Stopping the police to investigate the case and find out whether the offence is made out and quashing of the report would

amount to abuse of the process of law. The result of quashing the F.I.R. would be, as has been held by the Supreme Court in *State of West*

Bengal Vs. Narayan K. Patodia, , to render ""the allegations of offences made against a person to remain consigned in stupor perennially"". Instead

of achieving ends of criminal justice, the quashing of the investigation would achieve the reverse of it

10. In *State of Haryana v. Bhajan Lal* AIR 1942 SC 604, relied upon by the learned Counsel for the petitioner, the Court at para 108 held:

108. 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 u/s

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 channelised 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 F. I. R. do not disclose a cognizable offence,

justifying an investigation by police officers u/s 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 F.I.R. 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 u/s 155(2) of the Code.

5. Where the allegations made in the F.I.R. 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.

11. In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, it was observed:

7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to

whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special

features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This

is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction

are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into

consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

12. In *State of West Bengal and Others Vs. Swapan Kumar Guha and Others*, , it was observed:

The only other decision to which I need refer is that of the Privy council in AIR 1945 18 (Privy Council) , which constitutes, as it were, the charter

of the prosecution all over, for saying that no investigation can ever be quashed. In a passage of-quoted but much misunderstood. Lord Porter,

delivering the opinion of the Judicial Committee, observed:

In their Lordships' opinion, however, the more serious aspect of the case is to be found in the resultant interference by the court with the duties of

the police. Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if

found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in

matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory

right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial

authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an

exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the

combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function,

always, of course, subject to the right of the court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code to give

directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it,

and not until then, (at pp. 212-213 of Ind App): (at p.22 of AIR).

I do not think that this decision supports the wide proposition canvassed before us by Shri Som nath Chatterjee. In the case before the Privy

council, similar charges which were levelled against the accused in an earlier prosecution were dismissed. The High court quashed the investigation

into fresh charges after examining the previous record, on the basis of which it came to the conclusion that the evidence against the accused was

unacceptable. The question before the Privy council was not whether the fresh F. I. R. disclosed any offence at all. In fact, immediately after the

passage which I have extracted above, the Privy council qualified its statement

by saying:

No doubt, if no cognizable offence is disclosed, and still more, if no offence of any kind is disclosed, the police would have no authority to

undertake an investigation. If anything, therefore, the judgment shows that an investigation can be quashed if no cognizable offence is disclosed by

the F. I. R. It shall also have been noticed, which is sometimes overlooked, that the Privy Council took care to qualify its statement of the law by

saying that the judiciary should not interfere with the police in matters which are within their province. It is surely not within the province of the

police to investigate into a report which does not disclose the commission of a cognizable offence and the Code does not impose upon them the

duty of enquiry in such cases.

13. In *Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another*, , cited by the respondents, it was held:

... the legal position is well settled that if an offence is disclosed the Court will not normally interfere with an investigation into the case and will

permit investigation into the offence alleged to be completed. If the F.I.R., prima facie, discloses the commission of an offence, the Court does not

normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. *State of*

West Bengal and Others Vs. Swapan Kumar Guha and Others, . It is also settled by a long course of decisions of this Court that for the purpose of

exercising its power u/s 482, Cr. P.C. to quash a FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations

made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the

allegations *Pratibha Rani Vs. Suraj Kumar and Another*, .

The Court further observed:

15. Hence, in the present case, the High Court committed grave error in accepting the contention of the respondent that investigating officer had no

jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of police

station at Delhi. The appreciation of the evidence is the function of the Courts when seized of the matter. At the stage of investigation, the material

collected by an investigating officer cannot be judicially scrutinized for arriving at

a conclusion that police station officer of particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(C) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be inquired into or tried by a Court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that S.H.O., Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of respondent No. 2 on the ground of want of territorial jurisdiction.

16. Lastly, it is required to be reiterated that while exercising the jurisdiction u/s 482 of the Criminal Procedure Code of quashing and investigation, the Court should bear in mind what has been observed in the State of Kerala and Others Vs. O.C. Kuttan and Others, to the following effect (para 6 of AIR and Cri LJ):

Having said so, the court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. 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. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage it is not possible for the court to shift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of State of U.P. Vs. O.P. Sharma, , a three Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent

power u/s 482 or under Articles 226 and 227 of the Constitution of India, as the case may be and allow the law to take its own course. The same

view was reiterated by yet another three Judges Bench of this Court in the case of Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, , where this

Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion

that otherwise there will be gross miscarriage of justice. The court had also observed that social stability and order is required to be regulated by

proceeding against the offender as it is an offence against the society as a whole.

14. In M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another, it was observed:

4. We have carefully examined the submission of both the learned Counsel. After going through the impugned order and other connected papers,

we feel that the High Court was not justified in quashing the investigation which is still on its way. Needless to emphasise that the further

investigation in the offence is legally permissible as contemplated by Section 173(8) of Criminal Procedure Code. The learned Counsel appearing

for the State when asked represents that the investigation is not yet complete and the State would come to a definite conclusion as to the culpability

of the appellant only on the completion of the investigation. As repeatedly pointed out by various decisions of this Court that the investigation into

an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the Court is not justified

without any compelling and justifiable reason to interfere with the investigation.

15. In State of West Bengal Vs. Narayan K. Patodia, the Court held:

That apart, how could the FIR be quashed if the investigating agency should have been different? By lodging FIR alone no investigation is

conducted by the police. It is the first step towards starting investigation by the police. If High Court was of the opinion that investigation has to be

conducted by the Bureau then also there was no need to quash the FIR. Any way we take the view that as offences under the Indian Penal Code

are also involved, efficacious investigation can be conducted by entrusting it to the police investigating agency. Inherent powers of the High Court

as recognised in Section 482 of the Code are reserved to be used ""to give effect to any orders under the Code, or to prevent abuse of the process

of any court or otherwise to secure the ends of justice"". It is quite unfortunate that learned single judge overlooked the reality that by quashing the

FIR in the case the High Court did not achieve any one of the above factors. On the contrary, the result of quashing the FIR had rendered the

allegations of offences made against a person to remain consigned in stupor perennially. Hence, instead of achieving ends of criminal justice, the

impugned order would achieve the reverse of it.

16. Other cases cited by the parties also lay down the same principles.

I have gone through the case law cited by the learned Counsels for the parties. Applying the law laid down for the above referred authorities. I find

the present petition cannot maintain.

17. The police has registered a case and initiated investigation in the matter. Perusal of the report lodged by the respondent: 4 shows prima facie a

cognizable offence is made out. The proper course was to allow the police to proceed in the matter and find out whether the removal of the girl

was against her will or with her consent. Whether the parties have married and whether the parties have voluntarily entered into a valid marriage

contract are the issues which the investigating officer is required to look into. This Court cannot step into the shoes of the investigating officer to

find out whether any offence was made out against the accused or not. The petitioner No. 2 had obtained an interim bail from Principal District &

Session's Judge, Pulwama on the condition that he will co-operative with the investigation, instead of doing so the petitioners have fled to Jammu

and are residing there. This fact is evident from Annexure-D special power of attorney executed by the petitioners at Jammu.

18. In such circumstances I find the Court cannot interfere with the process of investigation at this stage. Petition is as such dismissed. Let the girl

be produced before the Police concerned for recording her statement. In case she applies to the police she may be given proper security as

required in the circumstances of the case.

Order accordingly.