

(2018) 02 J&K CK 0016
In the Jammu And Kashmir High Court
Case No : 349 of 2017

Parvaiz Ahmad Chisti

APPELLANT

Vs

State through Police Station Parimpora

RESPONDENT

Date of Decision : 01-02-2018

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Code of Criminal

Citation : (2018) 02 J&K CK 0016

Hon'ble Judges : Ali Mohammad Magrey

Bench : Single Bench

Advocate : Irfan Andleeb, B. A. Dar

Final Decision : Dismissed

Judgement

1. Impugned, in the instant petition, is the order dated 31st of August, 2017, passed by the Court of learned 1st Additional Sessions Judge,

Srinagar, whereby the petitioner/ accused, in connection with FIR No. 104/2016 registered at Police Station, Parimpora, has been charged for the

commission of offences under Section 8/21 of the NDPS Act.

2. Perusal of the order reveals that, on a detailed reference of the law governing the subject and with full examination of the material available

record, the learned trial Court has framed the charge against the petitioner/ accused. There is no ground available to the petitioner/ accused, both in

terms of the law and the facts, to seek interference from this Court in the proceedings under Section 561-A Cr. P.C.

3. Law on the subject is no more res integra. In ""State of Haryana v. Ch. Bhajan Lal"", reported in ""AIR 1992 SC 604"", the Supreme Court gave

illustration of the categories of cases in which the Courts could exercise the inherent powers under Section 482 of the Central Code of Criminal

Procedure, corresponding to Section 561-A of the State Code, either to prevent abuse of the process of any Court or, otherwise, to secure the

ends of justice. That was an appeal filed by the State of Haryana and two others, assailing the judgment dated 8th of September, 1989, of a

Division Bench of the High Court of Punjab and Haryana rendered in a writ petition, quashing the entire criminal proceedings, inclusive of the

registration of the Information Report, and directing payment of costs. In that case, an FIR under Sections 161, 165 IPC and 5(2) of the

Prevention of Corruption Act, 1947, was registered at Police Station, Saddar, Hissar, against Chowdhary Bhajan Lal, who had been the Chief

Minister of the State of Haryana, on the complaint of one Dharam Pal made by him on 12th of November, 1987, to the Chief Minister of the time,

namely Chowdhary Devi Lal - a political rival of Chowdhary Bhajan Lal - making certain serious allegations of corruption. The Officer on Special

Duty in the Chief Minister's Secretariat had endorsed the complaint to the Director General of Police, who, in turn, endorsed it to the

Superintendent of Police, Hissar. The Superintendent of Police, Hissar, recorded an endorsement reading "register a case and investigate". The

Station House Officer (SHO) registered the case under Sections 161, 165 IPC and 5(2) of Prevention of Corruption Act, 1947. While the Station

House Officer (SHO), after forwarding a copy of the FIR to the Magistrate and other officers concerned, himself took up the investigation,

Chowdhary Bhajan Lal filed a writ petition under Articles 226 and 227 of the Constitution of India, seeking issuance of a writ of "Certiorari" to

quash the FIR and also of a writ of prohibition restraining the respondents therein from proceeding with the investigation. The High Court held that

the allegations made were imaginary and fanatic, outcome of a desperate frustrated mind, the same appeared to have been levelled by Dharm Pal,

to avenge his insult of defeat in elections against the petitioner's wife and that the charges were all groundless; the mala fides, if at all attributable,

could be attributed to the Superintendent of Police and the Inspector, not to Chaudhary Devi Lal, the Chief Minister; there was non-application of

mind by the Station House Officer (SHO); that the allegations did not constitute a cognizable offence for commencing the lawful investigation.

Before the Supreme Court, the central issue involved for scrutiny, as reflected in paragraph No. 64 of the judgment, was whether the order of the Court in quashing the First Information Report and the proceedings of the investigation was legally sustainable and if not, to what extent, the said order suffered from legal infirmity? The Supreme Court, on consideration of the provisions of law on the subject, the facts of that case and the series of its earlier relevant judgments, in paragraph Nos. 107 to 111 of the judgment illustrated the categories of cases where the power could be exercised, observing and laying down as under:

107. Mr. Parasaran, according to whom the allegations in the present case do not make out an offence, drew our attention to a recent judgment of this Court in *State of U.P. v. V.R.K. Srivastava and Anr.*: 1989 Cri. L. J. 2301 to which one of us (S. Ratnavel Pandian, J.) was a party. In that case, it has been ruled that if the allegations made in the FIR, taken on the face value and accepted in their entirety, do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. The principle laid down in this case does not depart from the proposition of law consistently propounded in a line of decisions of this Court and on the other hand it reiterates the principle that the Court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the FIR, do not constitute an offence and that it depends upon the facts and circumstances of each particular case.

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 extra-ordinary 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 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 Under Section 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 noncognizable 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.

109. 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 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.

110. It may be true, as repeatedly pointed out by Mr. Parasaran, that in a given situation, false and vexatious charges of corruption and venality

may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sullyng his character, injuring his

reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of

the complaint. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party?

The answer would be that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions

of the Indian Penal Code-namely Under Sections 182 or 211 or 500 besides becoming liable to be sued for damages.

111. Reverting to the present case, the allegations made in the complaint, in our considered opinion, do clearly constitute a cognizable offence

justifying the registration of a case and an investigation thereon and this case does not fall under any one of the categories of cases formulated

above calling for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself.

4. Then, in paragraph No. 114 of the aforesaid judgment, the Supreme Court further observed and laid down as under:

...Even assuming that Dharam Pal has laid the complaint only on account of his personal animosity, that, by itself, will not be a ground to discard

the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. In this connection, the following

view expressed by Bhagwati, CJ in Sheonandan Paswan v. State of Bihar (1987) 1 SCC 288 at page 318: (AIR 1987 SC 877 at p. 89) may be

referred to:

It is well established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become

vitiated on account of mala fides or political vendetta of the first informant or the complainant.

5. In the above background and in view of the law laid down above, the instant petition is devoid of any merit, as such, same is dismissed

alongwith all connected MP(s). Interim directions, if any, in force as on date, shall stand vacated.