
(2023) 09 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 446, 1723, 1724 Of 2020

Pawan Kumar And Others

APPELLANT

Vs

UT Of J&K

RESPONDENT

Date of Decision : 22-09-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 482
Indian Penal Code, 1860 — Section 120B, 420
Public Gambling Act, 1867 — Section 3, 4

Citation : (2023) 09 J&K CK 0040

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Chetan Prabhakar, Pawan Dev Singh

Final Decision : Allowed

Judgement

M A Chowdhary, J

1. Petitioners through the medium of this petition filed in terms of Section 482 CrPC, invoking inherent jurisdiction, seek quashment of FIR No. 0305/2020 (in short, 'impugned FIR') registered at Police Station, Domana, Jammu for commission of offences punishable under Sections 420, 120-B IPC & Sections 3 & 4 of the Gambling Act, alleging that the case has been registered against them at the instance of some unknown persons, who may have vengeance against them and the impugned FIR is a mere abuse of process of law, as the police is being used as a tool to settle personal score of those unknown persons, which is well evident as to how the impugned FIR came to be registered and the petitioners, who happen to be father and son were arrested in the case.

2. It has been pleaded that perusal of the impugned FIR clearly shows that ? prima-facie?, commission of offences punishable under Sections 420 & 120-B IPC is not made out, as on vague allegations without there being any specific name of an aggrieved party, the ingredients of offence under Section 420 IPC cannot be constituted. It has been further pleaded that the necessary ingredients to

constitute the offences punishable under Sections 3 & 4 of the Act are also not satisfied, as neither there had been any gaming house, as defined under the Act nor anybody was found gaming in the room, wherefrom the alleged recovery of some amount, which has been kept by the petitioners for their personal use had been recovered. It was finally submitted that the registration of the case vide impugned FIR, is an abuse of process of law and that the same is liable to be quashed.

3. Pursuant to notice, the respondent filed reply/status report to the petition, asserting therein that on 31.10.2020, an information from reliable sources was received at Police Station, Domana that one person, namely, Pawan Kumar (petitioner No. 1 herein) having two Mobile Nos. 6005865165 & 9149585929 and one-Abhimaniyu Takiya @ Chinku, S/O Vinod Takiya, R/O, 93-F, Lane No. 04, Shakti Nagar, Jammu having Mobile No. 9906074007 alongwith some other persons under a criminal conspiracy have been indulging in betting in IPL Season 2020 Match at his own shops at Gho Manhasan, Jammu and cheated fraudulently many people of the area; that based on this information, a case was registered vide impugned FIR for commission of offences punishable under Sections 420, 120-B IPC & Sections 3 & 4 of the Gambling Act against those persons. During the course of investigation, ASI-Mohinder Lal, investigating officer, visited on spot and arrested both the petitioners and one-Gagandeep Singh @ Illu, who were involved in the commission of crime and as per their disclosure, one mobile set and one diary and cash worth Rs. 69,990/- (Rupees Sixty Nine Thousand, Nine Hundred & Ninety) were recovered and thereafter, after recording of the statements of the witnesses and during investigation, it was found that Pawan Kumar and Paras Gupta (petitioners herein) besides Gagandeep Singh @ Illu and Nipul Sharma @ Chicku were found in the commission of aforementioned offences and concluded the investigation into charge-sheet, which is awaiting orders of this Court for being produced in the Court of law.

4. Learned counsel for the petitioners while reiterating the assertions made in the petition argued, vehemently, that there being no factual background for commission of offences punishable under Sections 420 & 120-B IPC, the police concerned just to make the case cognizable and involving the petitioners in non-bailable offences so that they are arrested, registered the case for commission of these offences. He has also argued that the offence of cheating punishable under Section 420 IPC is constituted when someone is induced dishonestly to deliver any property to any person, or to make, alter or destroy the whole or any part of valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security. However, all these ingredients, i.e., ? fraudulent or dishonest inducement?, ?person so deceived by inducing to deliver any property? or ?to retain any property? are missing in the impugned FIR, as the impugned FIR and the reply/status report are silent with regard to the allegation as to who was cheated and induced to deliver property by the petitioners so as to constitute an offence punishable under Section 420 IPC and as to how the petitioners had entered into criminal conspiracy punishable under

Section 120-B IPC is not even remotely disclosed. He has also argued that the offences punishable under the Gambling Act are also not made out simply for the reason that the accused had been arrested from their shops and not from the place, wherefrom the alleged gambling amount had been recovered. Therefore, the ingredients of using some place as a gaming house and the persons found in the act of gaming both are missing.

5. Learned counsel for the petitioners has relied upon the judgments of the Madras High Court dated 21.07.2017 in case titled, "V. Shanmugam Vs. The Sub Inspector of Police, Mudaliarpur Police Station, Puducherry", Karnataka High Court dated 16.06.2021 in case titled, "Punith Kumar T.P Vs. State of Karnataka & Punjab-Haryana High Court dated 24.12.2008 in case titled, "Kanwardeep Singh Vs. Union Territory Chandigarh" to canvas his arguments. It was finally prayed to allow the petition and quash the impugned FIR to secure the ends of justice.

6. Learned counsel for the respondents, on the other hand, admitting that at the time of registration of the impugned FIR, there was no reference to any complainant or the person having been cheated by the petitioners in the alleged betting. However, after registration of the case and during investigation of the case, it had come forth that some persons, whose statements had been recorded under Section 164 of the CrPC before the Magistrate had alleged that they had been cheated with the promise of having their investments doubled by the petitioners, as such, the petitioners have no reason to complain that the offence under Section 420 IPC is not made out and also in view of the petitioners having been in constant touch with the co-accused had committed criminal conspiracy punishable under Section 420 IPC and that the betting amount of around Rs. 70,000/- had been recovered from the house of the petitioners. Therefore, there was sufficient material to register the case for the commission of not only cheating by criminal conspiracy, but also resorted to gambling punishable under the Gambling Act and prayed that in view of the commission of offences by the petitioners, the plea for quashing of the impugned FIR is uncalled for. It was prayed that respondent be permitted to produce the charge-sheet, so that on presentation of the charge-sheet, the petitioners are brought to justice in a Court of law.

7. It has been repeatedly held by the Apex Court that the inherent jurisdiction under Section 482 CrPC should be exercised by the High Courts sparingly and cautiously, not in a routine and mechanical manner. The underline principle to exercise this jurisdiction is as to whether there is any abuse of process of law and the same requires to be checked, to secure the ends of justice. It appears from the record made available on file that the impugned FIR was registered on a reliable information by the police, without disclosing the source thereof and under the impression that the petitioners alongwith some other persons had been resorting to betting in the IPL Season 2020, as such, an activity by them is punishable under the Gambling Act. The police appearing to be aware that the

case cannot be registered under the Gambling Act, being non-cognizable offences and the accused could not be arrested without the orders of the Magistrate and to overcome this difficulty, it appears that the police had invoked the offences punishable under Sections 420 & 120-B IPC.

8. It is not out of place to mention that the offence under Section 420 IPC cannot be constituted without someone having been cheated by the accused, who induces his/her property. It is clear and as has been admitted by the official respondents also that there was no complaint of any particular person with regard to the accusation that he/she had been cheated by any of the accused including the petitioners. Therefore, there being no complainant or any person having been cheated or induced of the delivery of the property, the case for commission of offences punishable under Sections 420 & 120-B IPC could not have been registered, as the material stated in the impugned FIR does not disclose the commission of any of these offences. So far as the Gambling Act is concerned, the case cannot be registered since both the offences of which the petitioners have been accused are non-cognizable in nature without the orders of the Magistrate. Therefore, registration of the case vide impugned FIR apparently seems to be misuse of the process by the respondent-police.

9. Having regard to the afore-stated discussion and reasons stated hereinabove, the process right from registration of the impugned FIR and the proceedings carried thereon during investigation are clearly an abuse of process of law and to secure the ends of justice, the impugned FIR alongwith all the consequential proceedings, is liable to be quashed. Resultantly, the impugned FIR No. 0305/2020 registered at Police Station, Domana under Sections 420/120-B and 3/4 of Gambling Act, with all the consequential proceedings is hereby quashed.

10. The petition is, accordingly, allowed alongwith connected application(s).