

(2023) 02 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous No. 501, 1625 Of 2021

Rahul Kumar & Ors

APPELLANT

Vs

UT Of J & K & Anr

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code Of Criminal Procedure, 1973 — Section 2(H), 155(2), 156(3), 157, 161, 174, 482

Indian Penal Code, 1860 — Section 109, 120B, 147, 201, 304B, 498A

Citation : (2023) 02 J&K CK 0015

Hon'ble Judges : M.A.Chowdhary, J

Bench : Single Bench

Advocate : Karan Sharma, Pawan Dev Sing, Sahil Bhardwaj

Final Decision : Dismissed

Judgement

MA.Chowdhary, J

1. Petitioners have invoked the jurisdiction of this court under the provisions of section 482 of the Code of Criminal Procedure for quashing the order dated 01.04.2021 (for short 'impugned order') passed by Learned Judicial Magistrate 1st Addl. Munsiff (Forest Magistrate), Jammu in a complaint filed by respondent No.2 u/s 156(3) of Cr.P.C, whereby, Learned Magistrate directed respondent No.1 (SHO Police Station Kanachak, Jammu) to register case against the petitioners for alleged commission of offences punishable u/ss 304-B, 498-A, 306, 147, 109, 201 & 120-B of IPC, who registered the case vide FIR No. 0054/2021 (for short 'impugned FIR') .

2. Petitioners/accused pleaded following facts:-

a) The petitioner No. 1 is the husband of deceased Renu Bala, petitioner No.2 is the mother of petitioner no. 1 and petitioner Nos.3 to 5 are the sisters of petitioner No.1, who are married, have never involved themselves with the commission of any offence as stated in impugned FIR No. 0054/2021. The

deceased namely Renu Bala died on 04-10-2020 due to electrocution while cooking, at the time of unfortunate incident, only petitioner no.2 was present in the house, who is 57 years old lady, heart patient as well as bedridden, the petitioner No. 1 is a government employee, serving in the Army and was on duty and rest of the petitioners have been falsely implicated as petitioners no. 3 to 5 are married and are at their respective in-laws houses at the time of unfortunate incidence, immediately after the death, inquest proceedings have been initiated which are required to be taken to their logical conclusion.

b) That the father of the deceased moved an application to the concerned Police Station for registration of FIR and also moved an application before SSP Jammu on 23-03-2021, but when the police has not taken any step on their part to lodge FIR against the accused persons for the murder of Renu Devi, he filed an application in the Court and the Learned Magistrate vide order dated 01-04-2021 directed SHO P/S Kana Chak, Jammu under section 156 (3) Cr.P.C to register the case and file the compliance report within 10 days after the receipt of the order. Pursuant to the directions of Learned Magistrate, FIR No. 0054 dated 18-04-2021 was registered against the petitioners.

c) That the registration of impugned FIR on the directions of Learned Magistrate vide impugned order dated 01-04-2021 clearly amounts to subversion of process of law initiated to ascertain true facts and circumstances leading to the death of the deceased and also amounts to harassment to all the petitioners who were not even present in the house at the time of incident except petitioner no.2. The petitioner no. 1 is a government employee. FIR was registered on an application moved by the father of the deceased under section 156(3) Cr.P.C that too without letting the inquest proceedings to its logical conclusion and if FIR proceeded on then in that eventuality all the petitioners will suffer to such an extent which cannot be compensated later on by any means including loss of job of petitioner no. 1.

d) That the story as reported on the basis of which the FIR got registered is nothing but only to use law as a weapon against the petitioners with a motive to destroy the future of an innocent petitioners, more particularly the petitioner No.1. The petitioners are innocent and law abiding citizen, hold good faith in the eyes of law and are fully cooperating with the police till date.

3. Petitioners plead that the allegations made against them by the father of the deceased are false, frivolous, bogus and vexatious and lack in the material substance. The petitioners have nothing to do with the alleged offences, as they always respected the deceased and also showered love towards her and never made any dowry demand as alleged in an application under section 156(3) by the father of the deceased. The allegations leveled against the petitioners as reported in the impugned F.I.R are baseless and cannot be taken into consideration, till the conclusion of the inquest proceedings.

4. Respondent No.1 in his counter affidavit stated that on 04.10.2020, an

information was received at Police Station Kana Chak, Jammu that one lady namely Renu Devi W/O Rahul Raj age 32 years R/O Simbliwala Tehsil Bhalwal District Jammu who was shifted to SDH Akhnoor for treatment was declared her as brought dead by doctors and her dead body had been brought back at home by her in laws. As the death occurred in suspicious circumstances and matter pertains to human death, cause of death was required to be ascertained. On this information, inquest proceedings u/s 174 Cr.P.C got initiated and the enquiry of inquest proceedings was handed over to ASI Waris Hussain Shah. During the course of investigation, the I.O seized the inquest proceedings file and prepared the seizure memo, visited the spot and prepared the site plan of the occurrence, recorded the statements of Kamal Singh S/O Mani Ram R/O Garhi (father of the deceased Renu Bala) and Babita Rani W/O Pawan Kumar R/O Garhi (sister-in-law of the deceased) under Section 161 Cr.P.C. At present, the investigation of the instant case is still going on, as the facts are yet to be ascertained and the investigating agency be given free hand to investigate the matter.

5. Respondent No.2 in his counter affidavit has stated that all the petitioners are involved in the commission of offences punishable under sections 304-B, 498-A, 306, 147, 109, 201 and 120-B IPC. It is denied that the deceased had died due to electrocution while cooking, but as a matter of fact, the deceased had suffered from various bodily injuries which were inflicted by all the petitioners, which can be easily seen from the photographs of the deceased and other evidence which was collected by the I.O of the case. It is further submitted that the deceased was always subjected to mental torture, harassment and cruelty at the hands of the petitioners in order to bring more dowry from her old father, however, the deceased was not able to fulfill the illegal demands of the dowry made by the petitioners. It is further submitted that on 2nd and 4th of October 2020, the deceased had called her sister namely Anju of Punjab and had narrated all the incidence of dowry demand made by the petitioners and the cruelty and harassment being met by her at the hands of all the petitioners and she had further narrated this to her sister, that she was being threatened by the petitioners that in case their demands of dowry were not fulfilled, they will not let her live happily in future and also threatened her to eliminate her. Therefore, he has prayed for dismissal of the petition.

6. Heard learned counsel for the parties and considered the matter. I have also perused the material available on record.

7. According to learned counsel for petitioners, allegations leveled are totally baseless, malicious and do not disclose any offence. It is contended that there being manifest, patent injustice apparent on the face of record of complaint and there is non-application of mind in passing the impugned order inasmuch as there is no evidence with regard to the allegations against the petitioners as is disclosed in the investigation of the police. It is averred that allegations made in the impugned FIR, even if are taken on their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the

petitioners and despite such facts, petitioners are being harassed by respondents just to jeopardize the job of petitioner No.1 and this is a beaten law of the land that where a criminal proceeding is manifestly attended with mala fide or maliciously instituted with an ulterior motive for wreaking vengeance on the accused, the same is liable to be quashed.

8. Before analyzing the facts emanating from the record of the trial court, it would be apt to notice the legal position as regards the scope of powers of the High Court under Section 482 of the Code of 1973, to interfere with the proceedings/complaint filed before a Magistrate.

9. The power under Section 482 of CrPC can be exercised by the High Court to prevent the abuse of process of the Court and otherwise to secure the ends of justice. The authority of the Court exists for advancement of justice and if any attempt is made to abuse the said authority, the Court has the power to prevent that abuse. These inherent powers of the High Court are wide in their scope. Wider the power, higher the degree of responsibility upon the authority vested with such power to exercise it with circumspection. These powers are generally exercised to secure the ends of justice.

10. The Supreme Court in the case of State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors reported as 1992 Suppl (1) SCC 335, has dealt with the scope of power of High Court under Section 482 CrPC 1973 in an elaborate manner. Paragraphs 102 and 103, which enumerates seven categories of cases, where power can be exercised under Section 482 CrPC, are extracted as follows:-

"102. 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 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 channelized 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 FIR do not disclose a cognizable offence, justifying an investigation by police officers under 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 FIR 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 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.

103. 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 FIR 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."

11. In *Pepsi Foods Ltd. & Anr vs. Special Judicial Magistrate & Ors* reported as (1998) 5 SCC 749, the Supreme Court relying upon the ratio laid down by it in *Bhajan Lal's case* (supra), observed as under:

"22. It is settled that High Court can exercise its power of judicial review in criminal matters. In *State of Haryana and others vs. Bhajan Lal and others* 1992 Supp (1) SCC 335, this court examined the extraordinary power under article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227

the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under Articles 226 and 227 of the constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers.”

12. Hon’ble Apex Court in a case titled State of Andhra Pradesh Vs. Gourishetty Mahesh & Ors. reported as (2010) 11 SCC 226 has held that though the powers possessed by the High Court under Section 482 CrPC are wide, however, such powers require care/caution in its exercise. The interference must be on sound principles and the inherent power should not be exercised to stifle a legitimate prosecution. It was clarified that if the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it was open to the High Court to quash the same in exercise of inherent powers under Section 482 CrPC.

13. From the foregoing survey of law on the subject, it is clear that in a case where allegations made in the complaint and evidence collected in support of the same do not disclose commission of any offence or make out a case against the accused, the High Court can exercise its powers under Section 482 of CrPC to quash the proceedings against an accused. The inherent powers cannot be, however, exercised to stifle or impinge upon the proceedings.

14. Section 2(H) CrPC includes all the proceedings under the Code for collection of evidence by a Public Officer or by any person other than the Magistrate, who is authorized by the Magistrate. Section 157 CrPC prescribes the procedure for investigation. Section 174 CrPC deals with the inquest proceedings upon receiving information by the police that a person has committed suicide or has been killed in an accident or has died under circumstances raising suspicion that some other person has done some offence. The purpose of inquest proceedings is to ascertain the apparent cause of death. These proceedings, in the nature of enquiry are entirely distinct from investigation under section 157 CrPC. The investigation is done by a police officer under section 157 CrPC, which results in submission of final police report. During inquest proceedings, if police officer finds commission of cognizable offence, FIR can be lodged to investigate further in terms of Section 157 CrPC.

15. The proceedings under Section 174 CrPC have a very limited scope. The object of these proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of death. The question regarding the details as to how the deceased was assaulted or by whom or under what circumstances is foreign to the ambit and scope of the proceedings under section 174 CrPC.

16. There is no dispute to the proposition of law that scope of inquest

proceedings is limited to ascertain the apparent cause of death of a person who died under suspicious circumstances. So far as the investigation is concerned, the same commences with the recording of an information pertaining to commission of a cognizable offence. Any step taken by the investigating officer pursuant to recording of such an information towards detection of the crime would be a part of investigation under the Code of Criminal Procedure. So these are two distinct types of proceedings. The inquest proceedings relate to ascertainment of apparent cause of death of a person who has died under mysterious circumstances, whereas proceedings pertaining to investigation relate to detection of the crime and all attending matters including the apprehension of the culprits.

17. From the aforesaid discussion of law on the subject, it is clear that merely because the inquest proceedings were pending before the police at the time when the impugned order was passed by the learned Magistrate would not make the said order unsustainable in law. In fact, the learned Magistrate while passing the impugned order has taken pains to deal with this aspect of the matter and has come to right conclusion by holding that the complaint filed by respondent No.2 contains clear and precise facts disclosing the commission of cognizable offence. While doing so, the learned Magistrate has noticed the background of matrimonial discord between the deceased and her husband. In the backdrop of these circumstances as also the fact that the petitioner No.2 was present on the spot when the death of the deceased had taken place in mysterious circumstances, there was sufficient material before the learned Magistrate to conclude that cognizable offences had taken place which required investigation by the police.

18. In view of aforesaid discussion, having regard to the legal position, it is held that, even without conclusion of inquest proceedings initiated under section 174 CrPC, case can be registered for investigation by lodging of FIR, on receipt of information about commission of cognizable offence. In the case on hand, the learned Magistrate had received a complaint which disclosed the commission of cognizable offences, who directed investigation. Therefore, there being no illegality, order impugned is sustainable.

19. For the reasons discussed hereinabove, it cannot be construed that there was any abuse of process by the learned Magistrate to order investigation into the death of the married woman at her matrimonial home even during pendency of inquest proceedings. This Court is thus not inclined to interfere with the impugned order, accordingly, this petition, for want of merit and substance, is dismissed along-with connected application(s).