

(2018) 10 J&K CK 0102

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 218 Of 2018, IA No. 01 Of 2018

Raj Mohini Sharma @APPELLANT@Hash State Of Jammu & Kashmir And Anr

Date of Decision : 26-10-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156, 156(3), 161, 162, 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 323, 382, 427, 451, 452, 506

Citation : (2018) 10 J&K CK 0102

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : B.S.Manhas, C. M. Koul, Rohan Nanda

Final Decision : Dismissed

Judgement

1. In this petition filed under Section 561-A of the Code of Criminal Procedure Svt. 1989, the petitioner seeks quashing of FIR No.02/2018 dated 06.01.2018 registered at Police Station Amb Gharota, District Jammu.

2. Brief facts of the case as mentioned in the petition are that the petitioner was assaulted by the respondent No.2 with the help of four other accomplices on 08.12.2017 at about 01.20 p.m., after they had committed house trespass and formed an unlawful assembly and as a result of which, the petitioner received injuries and was hospitalized on the same day in Primary Health Centre Bhalwal, District Jammu. The police registered an FIR No.110/2017 on the same day i.e., 08.12.2017 under Section 452/323/147 RPC against the respondent No.2 and her accomplices and the case is still under investigation. In order to counter the FIR lodged by the petitioner, the respondent No.2 approached the Court of learned City Judge (JMJC), Jammu on 22.12.2017, who, directed the respondent No.1 to proceed in the matter in terms of Section 156(3) Cr.P.C. and file report, if warranted. It is further stated that respondent No.1 having the knowledge that an FIR already stands registered against the respondent No.2 and her accomplices in respect of the same incident, filed another FIR No.02/2018 against the petitioner and her family members u/s 323/147/451/382/506/427

RPC on the basis of the complaint forwarded to him by the learned City Judge, (JMJC), Jammu, without verifying any fact.

3. The petitioner feeling aggrieved of the same, has challenged the said FIR No.02/2018 dated 06.01.2018 on the following grounds:

(a) That a perusal of the second FIR No.02/2018 registered at the instance of the respondent No.2 clearly reflects that the incident reported by her was squarely covered by the FIR forming Annexure-A1 filed earlier by the petitioner and lodging of the 2nd FIR qua the same incident is expressly prohibited by Section Cr.P.C but still the same has been registered and a parallel investigation launched by the respondent No.1 against the petitioner and her family members.

(b) That a comparison of both the FIRs show that the incident in question took place on 08.12.2017 in the afternoon and narration of events remains the same thereby demonstrating that essence of both the FIRs was similar and the subsequent FIR being 2nd in sequence was unwarranted and illegal.

(c) That the case filed against the petitioner is nothing more than an attempt by the respondent No.2 to neutralize her case registered under FIR No.110/2017 (Annexure-A1).

(d) That it is amply gatherable from the facts enumerated in the case registered at the behest of the petitioner that the respondent No.2 and her accomplices were solely responsible for assaulting her but in order to bail themselves out, a false case has been foisted upon her and other family members with a sole aim to bring them into submission.

(e) That the fact remains that the incident dated 08.12.2017 leading to the registration of FIR No.110/2017 was reported on the day of the occurrence itself to the respondent No.1. But on the other hand the incident projected by the respondent no.2 is said to have taken place at the same time, on the same day but reported to the Magistrate on 22.12.2017 i.e., after a period of about two weeks on the basis of which FIR No.02/2018 dated 06.01.2018 came to be registered against the petitioner and her family members.

(f) That the 2nd FIR lodged against the petitioner and others in an afterthought act whereas the FIR registered at her instance was prompt in nature thereby leading only to one conclusion she had nothing to hide but the respondent No.2 by manufacturing the facts filed 2nd FIR qua the same incident.

(g) That even the contents of the complaint don't make out the ingredients of the alleged offences against the petitioners and her family members and the registration of the said FIR is only a ploy to pressurize the petitioner to reach a compromise with the respondent No.2.

(h) That it is, manifest that the alleged crime reported by the respondent No.2 was nothing but a ploy to counter blast the case of the petitioner and frustrate the proceedings initiated by her against the respondent No.2 and her

collaborators in FIR No.110/2017.

4. Learned counsel for the petitioner in support of his arguments has relied upon the judgments of Hon'ble the Supreme Court in case titled T. T. Antony Vs. State of Kerala and others reported in 2001 (2) ACR 1510 (SC) and in case titled Surender Kaushik and others Vs State of Uttar Pradesh and others reported in 2013 (5) SCC 148.

5. Counsel for petitioner has reiterated all grounds taken in memo of petition, whereas counsel for respondents has argued that second FIR with regard to the same incident is maintainable as counter case by opposite side.

6. I have heard rival contentions and have given my thoughtful consideration to whole aspects of the matter and law the subjects.

7. From perusal of the FIR under challenge, it is evident that one Rita Sharma has lodged written complaint before JMIC, Jammu on 22.12.2017, against petitioners wherein it is stated that the complainant is a woman and permanent resident of J&K State and is law abiding citizen of India and doing the household work; that complainant in the morning of 08.12.2017 went to Akhnoor along with their family members i.e. her father-in-law along with her two sons for Pooja at Kameshwar Mandir Akhnoor and when the complainant along with all the aforesaid family members were coming back to home in their vehicle bearing registration No.JK02AG-0807 Alto Car was already parked wrongly in the centre of Mohalla street outside the house of the accused person; that when the complainant's son namely Vishal saw that the vehicle bearing registration No.JK02AG-807 Alto car was wrongly parked in the centre of the street and he was unable to pass his vehicle from that vehicle which has illegally retained the passage and blocked the Mohalla street outside the house of accused persons; that the complainant's son came out from his vehicle and went outside the gate of the accused person and requested the accused person to move their vehicle from the middle of the street and in the meanwhile the accused No.1 to 3 and 4 came out their house and all started abusing the complainant's son with filthy language and also threatened him that if you will again knock the gate or blow the horn, they will set ablaze his car and will kill him; that in the meantime, the father-in-law of complainant enquired and requested the accused persons not to abuse the complainant with folded hands but accused started man handling the son of the complainant and her father-in-law; that in the meantime, the accused No.1 went to his house and called the accused No.4, 5 & 6 from the house who came along with baseballs stick and bamboo stick and started raising slogans that nobody from the family of complaintant will go safely from the spot to their house; that the accused No.1 to 3 and 4 with an intention to cause grievous hurt started beating the complainant and her son with fists and legs and other accused persons with common object attacked the father-in-law and elder son of complainant with bamboo stick and baseball stick; that in the meanwhile, both sons of complainant with their efforts saved themselves from the clutches of the accused persons and ran away to their house to call persons of the locality to

save the complainant and her father-in-law from clutches of accused persons; that when both the sons of complainant went to their home, accused No.4 along with accused No.1, 2 and 3 chased them and criminally trespassed into the house of complainant along with bamboo stick and baseball stick; accused again started beating the complainant, her both sons, meanwhile complainant's daughter namely Anamika came out from the room to save her brothers from the clutches of the accused persons, but the accused No.1, 2 and 5 also slapped her and accused No.4 snatched the ear rings of the complainant's daughter and beaten her with fists and blows; that all the accused persons beaten the complainant and the other family members mercilessly; accused threatened that they will kill them, because accused No.1 is in police department as ASI and accused No.2 is a Gramsevak of the locality and one brother is a driver of SHO P/S Gharota; that in the meantime, some local persons of the locality came on spot and took the complainant's daughter along with other family members to P/S Gharota for lodging of FIR; that the police of P/S Gharota after receiving the written complaint from complainant, send them to PHC Gharota for treatment along with the lady constable Shallu Devi No.57-5 for medical examination. Photo copies of written complaint and medical record have been annexed; that thereafter the complainant was referred to Akhnoor Hospital for further treatment where the complainant remained admitted for 3 days for treatment and MLC case was also registered vide MLC No.2009 by the Doctor; that thereafter the complainant was discharged from Akhnoor Hospital and was referred to Shalimar hospital for further treatment; that accused persons are highly political influential persons and are serving in the police department; accused No.2 with the help of his position had lodged a false FIR against the complainant and other family members; that thereafter the complainant also approached the concerned SSP for taking necessary action and lodging of FIR but no action has been taken against the accused person till date. That inspite of committing aforesaid illegal acts by the accused persons which can be termed as offences, the police of Police Station Gharota has neither lodged any FIR nor investigated the matter against the accused persons and on the contrary implicated the complainant and other family members who are actual victims in a frivolous complaint filed by the accused.

8. On this complaint, JMIC directed the concerned police to investigate the matter in terms of section 156(3) Cr.P.C. Accordingly police registered FIR No.02/2018 u/s 323/147/451/427/382/506 RPC against accused and Investigation of the case was entrusted to IHC Bua Ditta No.956542/EXJ.

9. First argument of counsel for petitioner is that from facts of the case, no cognizable offence is made out. I have gone through the allegations made in complaint/FIR. From its bare perusal, it is evident that a case of cognizable offences is made out, for which, police has statutory authority under section 156 Cr.P.C. to investigate the matter.

10. The foremost argument of counsel for petitioner is that, second FIR of same

incident cannot be lodged. He has relied on decisions in case titled T.T.Antony vs State of Kerala and others reported in AIR 2001 SC 2637 and in case titled Surender Kaushik and others vs State of Uttar Pradesh and others, reported in 2013 (5) SCC 148, wherein it is held that second FIR or complaint of same incident by same complainant/victim against same accused would not lie.

11. There is no dispute with regard to this law. But this concept of sameness has restricted meaning and this does not bar filing of a counter FIR relating to same or connected cognizable offence.

12. In present case, date of incident is 08.12.2017 in both FIRs are same, one FIR No.110/2017 has been lodged on same day i.e. 08.12.2017 by petitioner-Raj Mohini Sharma against Sahil Sharma and four others including complainant-Reeta Devi in counter FIR No.02/2018; whereas in another FIR no.2/2018 has been lodged by Reeta Devi on direction of Magistrate on 06.01.2018 against petitioner herein and five others. Both FIRs contain criminal allegations against each others.

13. Even in Surender Koushik's case (supra), it is held as under:-

"20. Explaining further, the Court observed that if the law laid down by this Court in T.T. Antony (supra) is to be accepted to have held that a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code, such conclusion would lead to serious consequences inasmuch as the real accused can take the first opportunity to lodge a false complaint and get it registered by the jurisdictional police and then that would preclude the victim to lodge a complaint.

24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh (supra), the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible."

14. In Upkar Singh v Ved Parkash reported in 2004 (13) SCC 292, a three judge bench held as under:-

"Be that as it may, if the law laid down by this Court in T.T. Antony's case is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code then, in our opinion, such

conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question consequently he will be deprived of his legitimated right to bring the real accused to books. This cannot be the purport of the Code."

15. In 2018 AIOL 3191 in case titled P. Sreekumar v. State of Kerala and ors. , it is held as under :-

"29.

25. In the instant case, it is seen in regard to the incident which took place on 20-5-1995, the appellant and the first respondent herein have lodged separate complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back.

In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

30. The aforesaid principle was reiterated by this Court (Two Judge Bench) in Surender Kaushik & Ors. vs. State of U.P. & Ors., (2013) 5 SCC 148 in the following words:

"24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh, the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible."

31. Keeping the aforesaid principle of law in mind when we examine the facts of

the case at hand, we find that the second FIR filed by the appellant against respondent No.3 though related to the same incident for which the first FIR was filed by respondent No.2 against the appellant, respondent No.3 and three Bank officials, yet the second FIR being in the nature of a counter-complaint against 13 respondent No.3 was legally maintainable and could be entertained for being tried on its merits.

32. In other words, there is no prohibition in law to file the second FIR and once it is filed, such FIR is capable of being taken note of and tried on merits in accordance with law."

16. Law with regard to quashing of FIR/complaint is well settled. This can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice. The expression ends of justice and to prevent abuse of process of any court are intended to work out either when an innocent person is unjustifiably subjected to an undeserving prosecution or if an ex-facie all merited prosecution is throttled at the threshold without allowing the material in support of it. This court while exercising the power under section 561-A Cr.P.C., does not function as court of trial, appeal or revision. Inherent jurisdiction has to be exercised sparingly, carefully and with great caution. These powers cannot be used to stifle the legitimate investigation. In view of above law, this petition is not maintainable. Hence, it is dismissed. Stay, if any, is vacated.