
(2019) 03 J&K CK 0020

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 368 Of 2014, IA No. 426, 480 Of 2014

Rajnish Bala And Anr

APPELLANT

Vs

State Of Jammu & Kashmir And Anr

RESPONDENT

Date of Decision : 01-03-2019

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 420, 467, 468, 471
Code Of Criminal Procedure, 1898 — Section 561A

Citation : (2019) 03 J&K CK 0020

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Jasbir Jasrotia, Aseem Sawhney

Final Decision : Dismissed

Judgement

1. In this petition, the petitioners seek quashment of F.I.R No.40/2013 dated 07.03.2013 u/s 420,467,468,471 RPC registered at Police Station, Nowabad.
2. Learned counsel for the petitioners submits that respondent No. 2 has leased out his shop to petitioner No.2 in the year, 2002 in which petitioner No.1 is carrying on business of dealing in drugs and medicines as per law under a valid licence and under the name and style of M/s Sanjay Medical Hall. Learned counsel further submits that whole of family members of the petitioners which comprised of his widow mother, two minor children depend upon the earning of the petitioners from the said rented shop for livelihood.
3. It is further submitted that on 19.09.2011, respondent No. 2, who is serving in the police department along with some other persons with criminal intention entered into the said shop under the possession of the petitioners and asked to vacate and hand over the possession of the shop, failing which, respondent No.2 would dispossess them forcibly from the said shop. Accordingly, petitioner No.2 filed a civil suit based on facts and truth against the respondent No.2 in which after considering the case prima facie the court of 1st Additional Munsiff (Forest

Magistrate), Jammu granted an interim restraint/status quo order dated 20.09.2011 and subsequently same was made absolute on 04.02.2012. It is further submitted that respondent No.2 by applying all devices intended to oust the petitioners from the said shop and to succeed in his intentions, he abused and threatened the petitioner No.1 with dire consequences and criminally intimidated her many a times. Thereafter, respondent No.2 disconnected electric supply connection of the said shop in the last week of September, 2011 himself and thereafter, moved an application before A.E.E Electric M&R.E Sub Division, Canal road, Jammu on 15.10.2011 for disconnecting electric connection and officially the connection was disconnected on 17.10.2011.

4. Learned counsel for the petitioners stated that petitioner No.2 filed an application seeking information under R.T.I Act as to at whose instance the electric connection was disconnected. The Executive Engineer, Elect. M&R.E Division III Jammu vide his office No. MD-III/J/Esstt/4541-42 dated 22.11.2011 gave written reply to that R.T.I application filed by petitioner No.2 stating therein that the consumer Sh. Gurdayal-respondent No.2 had applied for disconnection of electric installation/connection on 15.10.2011 as such the electric connection was removed. It is further stated that with a view to oust the petitioners from the rented shop and to harass the petitioners as also with a view to converting the civil litigation into criminal one, the respondent No.2 has got registered F.I.R. No.40/2013 under Section 420/467/468 & 471 RPC in Police Station, Nowabad.

5. I have heard counsel for parties and gone through the law on the subjects.

6. From the perusal of FIR, it appears that respondent no.2, who is the landlord of shop leased out to petitioner no.2 situated at Bhagwati Nagar, Jammu (M/S Sanjay Medical Hall), has lodged a written complaint before CJM, Jammu stating as under:-

"1.The applicant is permanent resident of Village Bagwati Nagar, Jammu which all under the jurisdiction of police station Nowabad.

2. That applicant has moved an application before SSP Crime, Jammu on 16.07.2012 for lodging F.I.R against the non applicant for committing an offence under the aforesaid Sections.

3. That after filing the aforesaid application before SSP Crime, Jammu in which complete detail regarding preparation of false rent agreement by putting signature of the applicant given and in which complete detail has been given. SSP Crime, Jammu forwarded the same to SDPO, Bakshi Nagar for lodging F.I.R against the accused. It is further submitted that SDPO Bakshi Nagar vide his No. 11431/SDPO dated 23.08.2012 has forwarded to SHO Police Station, Nowabad but more than 05 months have lapsed. Neither the FIR nor any enquiry in this regard has been conducted by the concerned SHO. Copy of the application dated 16.07.2012 filed by the applicant before SSP Crime, Jammu which has now been forwarded to SHO Police Station, Nowabad is enclosed herewith and marked as Annexure A.

4. That the applicant has given shop to the non applicant on rent without executing any rent agreement and when it has come in the notice of the applicant that non applicant have prepared false and forged rent agreement by putting forged signature of the applicant he moved an application before the Drug Controller, Muthi for obtaining certified copy of the forged rent agreement and in response to the said application, the supplied copy of rent agreement to the applicant, copy of which is enclosed herewith and marked as Annexure B.

5. After obtaining the aforesaid copy of the rent agreement, the applicant came to know that the accused person namely Rajneesh Bala has prepared a false and forged agreement to make it genuine without the consent of the applicant and that too by putting the forged signature of the applicant. The said forged and false document in which two witnesses have been shown who have also been made party in the present application for lodging FIR have also put their signatures on 16.09.2007 as such, two witnesses have also committed an offence with conspiracy of accused persons namely Rajnesh Bala who has prepared forged agreement for obtaining drug licence for running the medical shop.

6. That in the said rent agreement one person namely Rajnesh Bala has shown as tenant and Sanjay Kumar husband of Rajnesh Bala and Tara Chand have shown as witness in the said rent agreement. The non applicants/accused have cheated the applicant and have prepared the rent agreement without the consent of the applicant putting his forged signatures to show the same as genuine as such the accused have committed an offence under the aforesaid section of RPC.

7. That the accused persons are highly influential and police is refusing to lodge FIR against them and police is not investigating the matter. It is, therefore, respectfully prayed this Hon'ble Court may very kindly be pleased to direct the SHO Police Station, Nowabad to lodge FIR against the accused under aforesaid sections of RPC and submit status report within some prescribed period of time."

7. This complaint was forwarded to concerned SHO of Police Station Nowabad, who then lodged impugned FIR No.40/2013 u/s 420, 467, 468, 471 RPC on 07.03.2013.

8. From the perusal of contents of petition and arguments advanced by counsel, one fact is clear that complainant is landlord of shop leased out to petitioner no.2 situated at Bhagwati Nagar, Jammu, where petitioner No.2 is running shop (M/S Sanjay Medical Hall). It is also a fact that various litigations are pending between parties. The law with regard to quashing of FIR is now well settled. FIR 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.

9. 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 prosecution. This is discretionary power vested in High Court to do substantial justice. High Court cannot examine the evidence as to whether charge for alleged offence is made out or not. This is prerogative of trial court where challan is produced. Where accused has opportunity to advance submission before trial court that material on record does not call for framing of charge that High court shall not exercise power under section 561-A Cr.P.C.

10. In present case FIR has been registered with allegations that accused/ petitioner namely Rajneesh Bala w/o of tenant Sanjay Kumar (petitioner no.2) has prepared a false and forged rent agreement to make it genuine without the consent of the complainant by putting the forged signature of complainant; on the said forged and false document two witnesses have also been shown who have put their signatures on 16.09.2007; it is further allegation that petitioners have used that forged document and obtained the Drug Licence for running the medical shop. In said deed petitioner-Rajneesh Bala is shown as tenant and Sanjay Kumar, husband of Rajneesh Bala, and Tara Chand have been shown as witnesses in the said rent agreement.

11. As per status report submitted by I/O, the statements of witnesses have been recorded and the FSL report obtained from concerned. It has proved that document in question is forged one and offences under section 420, 467, 468, 471 RPC have been proved.

12. All the pleas taken in the petition and those argued may be relevant for discharge of accused, but not for quashing the FIR, because all the pleas are pertaining to appreciation of facts. It is not case of petitioner that 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 proceeding.

13. In view of above discussion, this petition is dismissed. However, petitioners are at liberty to take all pleas of facts or law before court below at the time of framing of charge. Stay, if any, is vacated.