

(2018) 11 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Application Criminal No. 13 Of 2015, Criminal Miscellaneous Case No. 158 Of 2015, IA No. 180 Of 2015

Razia Begum And Ors. @APPELLANT@Hash State Of Jammu & Kashmir & Ors

Date of Decision : 22-11-2018

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 147, 323, 452, 504, 506, 552
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Citation : (2018) 11 J&K CK 0040

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : S. S. Ahmed, Sudesh Magotra

Final Decision : Allowed

Judgement

1. In this petition filed under Section 561-A of the Code of Criminal Procedure, the petitioners inter alia seek quashing of FIR No.181/2015 under section 452/ 323/ 504/ 506/ 147 RPC dated 10.04.2015, registered at Police Station, Rajouri.

2. Brief facts of the case are that an FIR No.176/2015 dated 08.04.2015 was already got registered by petitioner No.1 against respondent No.4 and as a counter blast impugned FIR No.181/2015 dated 10-04-2015 was registered against all the petitioners by the respondent No.3 at the behest of respondent No.4, who happens to be the Bhabhi of respondent No. 4 projecting therein concocted facts by alleging therein that on 08-04-2015 all the petitioners were going through the land of respondent No.3, to which respondent No.3 objected and upon which all the petitioners after entering in her house attacked her. The FIR impugned was although registered on 10-04-2015 but the incident was shown on 08.04.2015 as a counter blast to the FIR No.176 of 2015 dated 08-04-2015 registered by petitioner No.1 against respondent No. 4, which clearly shows that the impugned FIR No.181/2015 dated 10-04-2015 is nothing but was

registered against the petitioners as a counter blast to the FIR No. 176/2015 dated 08-04-2015 to wreck vengeance against the petitioners, therefore, the FIR impugned is required to be quashed.

3. Petitioners feeling aggrieved, have challenged the FIR No.181/2015 dated 10.04.2015 impugned in this petition on the following grounds:-

i) That it is mentioned in the FIR impugned dated 10-04-2015 that on 08-04-2015 all the petitioners are going through the land of the respondent No. 3 to which the respondent No. 3 objected and after her objections all the petitioners after entering in her house attacked her. It is respectfully submitted that so far as petitioner No. 7 is concerned he is constable in CRPF and on 08-04-2015 he was on duty which was duly certified by the commanding officer which clearly says that the petitioner No. 7 under the supervision of his commanding officer was on duty round the clock on 08-04-2015 from 1900 hrs to 0500 hrs and so far as other petitioners are concerned, they are with the investigating officer concerned registering FIR No. 176/2015 dated 08-04-2015. Perusal of the FIR No. 176/2015 dated 08-04-2015 clearly shows that at 1800 hrs the FIR was registered and at that time all the petitioners were at Police Station, Rajouri and the perusal of the FIR impugned dated 10.04.2015 which was registered at 19:30 hrs say that on 08-04-2015 the petitioners had attacked the respondent No. 3 when the fact remains that at 19:30 hrs and before 1930 hrs the petitioner No. 7 was on duty and the other petitioners at Police Station, Rajouri registered the FIR No.176/2015.

The aforementioned facts and figures clearly show that on 08.05.2015 the petitioners were not at all present at Kalalkas and to say that the petitioners on 08.05.2015 had attacked the respondent No. 3 is totally false. As a matter of fact the FIR impugned by the respondent behest of respondent No. 4 against whom the petitioner No. 1 had already got registered an F1R on 08.05.2015. The FIR impugned was although registered on 10-04-2015 but the incident was shown on 08-04-2015 as a counter blast to the FIR No. 176/2015 dated 08.05.2015 registered by the petitioner No.1 against the respondent No. 4, which clearly shows that the FIR impugned No. 181/2015 dated 10-04-2015 is nothing but was registered against the petitioners as a counter blast to the FIR No. 176/2015 dated 08-04-2015 to wreck vengeance against the petitioners, therefore, the FIR impugned is required to be quashed.

ii) That Honble Supreme Court has laid down following guidelines with regard to the quashing of FIR in case titled state of Haryana & Ors vs Ch. Bhajan Lal and Ors reported in 1992 AIR 604, 1990 SCR Supl. (3) 259.

iii) That present case is fully covered under the principles laid by the Honble Supreme Court in the case (supra) as such the present FIR is liable to be set aside and quashed.

iv) That the allegations made in the FIR, 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 as such the FIR merits to be quashed and the allegations in the FIR do not disclose a cognizable offence for proceeding against the petitioner, therefore, the FIR is required to be quashed.

v) That the allegations made in the FIR are so absurd and inherently improbable on the basis of which it has been inferred that there is sufficient ground for proceeding against the petitioners. The FIR has been maliciously instituted with an ulterior motive for wreaking vengeance on the petitioners.

vi) That the Hon'ble Apex Court in various authoritative pronouncement has categorically held that the FIR should be quashed at the very outset if the same has been lodged maliciously with an ulterior motive for wreaking vengeance or with a view to spite a person due to private and personal grudge. The Hon'ble Supreme Court as already mentioned above has also laid down in State of Haryana Vs Bhajan Lal that when FIR is abuse of the process of law and where the prosecution is malicious and full of vengeance or to satisfy personal grudge the same should be quashed at the very threshold. In the instant case the FIR impugned has been lodged against the petitioners by the respondent No. 3 at the behest of respondent No. 4 against whom an FIR stands already registered by the petitioner No. 1 and in order to satisfy her ego by victimizing/harassing the petitioners for none of their fault and this is the reason that FIR impugned has been registered against the petitioners and in the garb of said FIR the respondent No. 2 is harassing the petitioners like anything and are raiding the different places in order to arrest the petitioners and in view of this FIR impugned is required to be quashed.

4. This court while entertaining the instant petition vide order dated 28.04.2015, issued notices to the respondents and the investigation with regard to FIR No.181/2015, registered at Police Station, Rajouri was stayed.

5. Learned counsel for the respondent-State has filed the status report with regard to the impugned FIR No.181/2015 wherein it is stated that on 10.04.2015 one Kaneez Begum W/o Mohd Sulman R/o Kalal Kass Dana Rajouri lodged a written complaint in the Police Station against 1. Munir Hussain S/o Munshi Khan, 2. Abdul Rashid 3. Abdul Hamid, sons of Noor Alam, 4. Abdul Majid S/o Kamaal Din, 5. Razia Begum @ Guddi W/o Abdul Majid, 6. Mohd Sharief S/o Dil Mohd, 7. Abdul Khaliq S/o Khan Mohd caste Gujjar, all R/o Kalal Kass except No.6, who is the resident of Sewa Jaghir stating therein that she is the permanent resident of village Kalal Kass Dana, her husband is in the country of Sudi-Arabia for labour purpose and the above alleged persons are her relative having old enmity on a piece of land with her. That on 08-04-2015 at about 1900 hours the above alleged persons were passing from her land, when the complainant objected them into the matter, meanwhile the above alleged intimidation where they beaten her with fists and blows even also threatened for dire consequence. On this, complainant made hue and cry due to which some nearby persons come on the spot and save her from the alleged. She further stated in the application that the alleged persons had restrained her for compromise on village level due to

which delay occurred in lodging of report in the Police Station. On this, case FIR No.181/2015 under Sections 452/323/147/504/506 RPC was got registered and investigation of the case was entrusted to ASI Abdul Razaq of Police Station, Rajouri.

6. Heard learned counsel for the parties and perused the case file.

7. In AIR 2017 Supreme Court 37 in case titled State of Telangana v Habib Abullah Jeelani, it is held as under :-

"11. Once an FIR is registered, the accused persons can always approach the High Court under Section 482 CrPC or under Article 226 of the Constitution for quashing of the FIR. In Bhajan Lal (supra) the two-Judge Bench after referring to Hazari Lal Gupta v. Rameshwar Prasad [7], Jehan Singh v. Delhi Administration [8], Amar Nath v. State of Haryana[9], Kurukshetra University v. State of Haryana[10], State of Bihar v. J.A.C. Saldanha [11], State of West Bengal v. Swapan Kumar Guha [12], Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi [13], Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [14], State of Bihar v. Murad Ali Khan [15] and some other authorities that had dealt with the contours of exercise of inherent powers of the High Court, thought it appropriate to mention certain category of cases by way of illustration wherein the extraordinary power under Article 226 of the Constitution or inherent power under Section 482 CrPC could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The Court also observed that 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 cases wherein such power should be exercised. The illustrations given by the Court need to be recapitulated:-

"(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 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 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."

It is worthy to note that the Court has clarified that the said parameters or guidelines are not exhaustive but only illustrative. Nevertheless, it throws light on the circumstances and situations where court's inherent power can be exercised.

12. There can be no dispute over the proposition that inherent power in a matter of quashment of FIR has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."

8. From bare perusal of documents attached, it is evident that an FIR No.176/2015 u/s 354 PC was registered against respondent No.4 on the allegations that on 25.2.2015 respondent no.4 came to residence of petitioner no.1 who was lone as her husband was working in Saudi Arabia, he started giving sexual advances and started using filthy languages; on being objected he caught hold petitioner no.1 from breast with the result she raised hue and cry and was released from clutches of accused/respondent no.4.

9. The date and time of incident in FIR no.181/2015 u/s 452/323/504/506/147/RPC impugned in this petition, is 08.04.2015 and 7 pm respectively and has been lodged on 10.04.2015; the date and time of incident in FIR no.176/2015 u/s 354 RPC lodged by Petitioner no.1 (Razia Begum in this petition), is 25.02.2015 and 4.30 pm respectively, but date of lodgment of FIR is 08.04.2018.

Thus, date of lodgment of FIR no.176/2015 u/s 354 RPC is 08.04.2018; and date of alleged incident in impugned FIR No.181/2015 u/s 452/323/504/506/147/RPC is also 08.04.2018.

But impugned FIR No.181/2015 under sections 452/323/504/506/147/RPC has been lodged after the lodgment of FIR No.176/2015 by petitioner no.1 against respondent no.4.

10. Respondent no.3 (complainant) in FIR 181/2015 u/s 452/ 323/ 504/ 506/

147/ RPC, is sister-in-law of alleged accused in FIR No. 176/2015 u/s 354 RPC. The allegation leveled in impugned FIR No.181/2015 is that accused persons namely (1) Munir Hussain (2) Abdul Rashid (3) Abdul Samad sons of Mohd Alam (4) Abdul Majid S/O Kamal Din (5) Razia Begum alias Gudi W/o Abdul Majid (6) Mohd Sharief S/o Dil Mohd (7) Abdul Khaliq S/o Jaan Mohd. Accused no 1 to 5 and 7 are the resident of Kalalkas, Tehsil and Distt. Rajouri, whereas the complainant is also resident of Kalalkas, Tehsil and Distt. Rajouri and the above mentioned accused persons are her relatives. There is an enmity in between the complaint and the accused persons with regard to a land. The husband of the complainant has gone to Saudi Arab for labour. On 08-04-2014 at about 7 pm accused persons, with the criminal intention, were passing in her land. When they were asked by the complainant not to pass in her land, all the above mentioned accused persons started abusing the complainant and they threatened to kill her. When they were again asked by her, all the accused persons entered in her residential house. They started beating the complainant with kicks and blows. The complainant made a hue and cry and few person arrived on the spot who saved the complainant from the accused persons otherwise she might have been killed by them. Evidence in that regard are present. The accused persons thereafter kept the complainant in dark while calling Panchayat day by day and thus there is a delay in filing the said complaint. It is, therefore, requested that a legal action may be taken against the accused persons. On the verbal investigation, it was found that the complainant has no injury marks and thus no medical check-up was conducted. On the basis of the aforesaid application, it was established that the accused persons named above have committed the offence under Sections 506/323/504/552/147 RPC and FIR in this regard was registered in the concerned Police Station.

11. From bare perusal of impugned FIR No.181/2015, it is evident that, it has been lodged as counter blast to FIR No.176/2015 which has been lodged by petitioner no.1; the petitioner no.7 Munir Hussain (petitioner no.6) i.e. BSF employee was on duty on day of occurrence at police line Rajouri as is evident from certificate Annexure-C issued by CO of CRPF. In view of above discussion and law on the subject, I am of considered opinion that impugned FIR has been lodged as counter blast to FIR No.176/2015 lodged by petitioner no.1; it has been maliciously instituted with an ulterior motive for wreaking vengeance on the accused persons and with a view to spite them due to private and personal grudge.

12. In view of above law, therefore, petition is allowed and impugned FIR No.181/2015 under section 452/ 323/ 504/ 506/ 147 RPC dated 10.04.2015, registered with Police Station, Rajouri, is quashed. Connected IAs also stand disposed of accordingly.