

(2018) 11 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 60 Of 2018, IA Nos. 01, 02 Of 2018

Sanjeev Singh @APPELLANT@Hash State Of Jammu & Kashmir And Anr

Date of Decision : 30-11-2018

Acts Referred:

Jammu And Kashmir Police Rules, 1960 — Rule 597

Citation : (2018) 11 J&K CK 0021

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : P.S. Pawar, Raman Sharma

Final Decision : Disposed Off

Judgement

1. Through the medium of instant petition filed under Section 561-A Cr.P.C, the petitioner seeks quashing of false and frivolous FIR No.02/2017 dated 21st February, 2017, registered by respondent No.2 against the petitioner under Section 188 RPC and 48 (a) of Excise Act at GRP, Katra in sheer abuse of process of law and Court.

2. The factual matrix of the case is that the petitioner is Sepoy in Indian Army, more particularly, in 6 JAKRIF ever since 2004. The battalion of the petitioner was posted at Delhi. The marriage ceremony of the younger brother of the petitioner, namely, Rajeev Singh S/o Rashpal Singh was scheduled to be held on 28th February, 2017. A wedding card evidencing the factum of the said marriage is enclosed herewith and is marked as Annexure-C. In the said marriage, there was a cocktail function also. The petitioner within his eleven months quota got issued 55 bottles of liquor from CSD Canteen of his own unit. So, in order to attend the marriage function and to deliver the said liquor for cocktail function, he being an Army Personnel got warrants and ultimately, a ticket was issued of Shree Shakti Express from Delhi to Jammu and boarded the said train on 20th February, 2017 at 9.00 P.M and the arrival time of the said train at Jammu was 3.00 A.M. Therefore, the petitioner was on his way from Delhi to Jammu with 55 bottles of liquor, duly issued by the CSD Canteen. An Authority Letter dated 20th February, 2017 was also issued to the Unit in favour of the petitioner to carry the

said liquor for his brother's marriage. The petitioner was sanctioned a leave of thirty days by his Unit in order to attend the said marriage ceremony. The last Station of the said train was at Katra, whereas the Railway Ticket issued in favour of the petitioner was upto Jammu only, but because of the reason that the petitioner fell asleep and could not wake up at Jammu Railway Station at 3.00 A.M, therefore, reached at Katra inadvertently and while coming out on the Railway Station, he was apprehended by the GRP Personnel. Nonetheless, the petitioner produced not only his identity card, but also the Authority Letter and the Leave Certificate warrant in order to substantiate the legal possession of the said liquor with him, but all the request and persuasion of the petitioner did not go into the deaf ear of the respondent No.2 and ultimately, the petitioner was arrested illegally, his belongings and the said liquor was also seized and the petitioner was put behind the bars by slapping an impugned FIR over the petitioner.

3. The petitioner being aggrieved of the aforesaid impugned FIR, has challenged the same on the following grounds:-

(i) That the impugned FIR is a sheer abuse of the process of Law and Court hence deserves to be quashed out right.

(ii) That the impugned FIR is an arbitrary and mechanical act on part of respondent No. 2 and is a naked example of misuse of absolute power of the Registration of FIR. The impugned FIR hence deserves to be quashed.

(iii) That the offences under which the impugned FIR has been registered that is under Section 188 R.P.C. and under section 48(a) Excise Act cannot be said to have been committed by the petitioner, as the offence under section 48(a) R.?.?. Excise Act which reads as under:-

"Whoever in contravention of this Act or of any rule or order prescribed or notified there under or of any licence or permit granted there under:-

(a) Imports, exports, transports or possesses liquor or (any intoxicating drug, or, molasses, or).

Further, section 5 of the Act reads as under:-

No liquor or intoxicating drugs shall be imported into the Jammu and Kashmir State except:-

(a) after payment of any duty to which it may be liable under this Act, or execution of a bond for such payment, and

(b) in compliance with such conditions as the Government may impose.

So, the conjoint reading of section 48(a) and 5 of the Excise Act reveals that the petitioner has been booked for his importing the liquor in state from Delhi. The import of liquor in state does not come in the way, if the person if he after payment of any duty, to which it is liable under the Act imports the liquor.

Similarly, in the present case the petitioner was sanctioned/issued with the said liquor along with authority letter to carry the same for marriage purpose but the respondent no. 2 has not only ignored the said documents but also concealed the identity of the petitioner as defence personal in order to falsely book him in the impugned FIR.

(iv) That admittedly neither there was any old rivalry nor any reason with the respondent to involve the petitioner in the impugned FIR, but the cause arose when the respondent No. 2 along with his men started demanding 1 case (12 bottles) out of 55 bottles from the petitioner. On refusal of the petitioner to accede to the said illegal demand of the police official, the petitioner has illegally been framed in the impugned FIR, but despite that 5 bottles out of 55 bottles have been concealed by the respondent no. 2 and his men while showing the recovery of 50 bottles out of the 55 bottles.

(v) That the offence u/s 188 R.P.C. is also not readable against the petitioner because neither the petitioner has disobeyed any order promulgated by the public servant intentionally or deliberately nor any act of the petitioner has injured, annoyed or obstructed to any person. Moreover, the impugned FIR against the petitioner u/s 188 R.P.C. is not permissible under law as in terms of section 195 Cr.P.C, no FIR can be registered in absence of any complaint by the public servant but here is a case while coming out of the Railway Station, Katra the petitioner has been apprehended and straight away booked under section 188 R.P.C. which is otherwise barred under law.

(vi) That the registration of impugned FIR has seriously prejudiced the petitioner as entire service of the petitioner has been brought under clouds by the illegal act on part of the respondent No. 2.

(vii) That because of the said impugned FIR the petitioner was kept behind the bars for 14 hours together and even was not allowed to attend the funeral of his grandmother who incidentally died on 20-02-2017. Copy of the death certificate is enclosed herewith and is marked as Annexure H.

(viii) That the petitioners have reserved their rights to urge additional grounds at the time of hearing.

4. From bare perusal of the impugned FIR, it is evident that on 21.02.2017, the accused was found in possession of liquor at Katra Town when he was alighted from the train. Accordingly, police registered FIR No.02/2017 against him under Section 188 RPC and 48 (a) of Excise Act.

5. I have considered the arguments of learned counsel for the petitioner and the grounds taken.

6. The first argument of counsel for petitioner is that no FIR u/s 188 RPC can be registered without compliance of section 195 Cr.P.C.

7. I have considered this aspect of the matter. Section 188 RPC deals with

punishment of disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction. In terms of section 195 Cr.P.C., no court can take cognizance for offences under sections 172 to 188 Cr.P.C., except complaint in writing is made by public servant concerned or of some other public servant to whom he is subordinate. Complaint has been defined in section 4 (e) which means allegations made orally or in writing to a Magistrate with a view to his taking action under this code.

8. A conjoint reading of these provisions of law, impliedly it can be inferred that police has no independent power to register an FIR for commission of offence under section 188 RPC.

9. In view of above, FIR pertaining to section 188 RPC is quashed.

10. Another argument of counsel for the petitioner is that the petitioner is an Army personnel and he was provided 55 bottles of liquor by the order of the Commanding Officer (C.O). He was taking this liquor for the marriage of his younger brother, so the case is false. This argument does not hold good because taking of liquor in Katra Town is totally banned. Another argument of learned counsel for the petitioner that police has not taken into consideration the documents submitted by petitioner with regard to issuance of liquor by CO and the marriage card of his younger brother. This aspect of the matter can be taken note of by directing the police to consider the same in terms of Rule 597 of The Jammu and Kashmir Police Rules, 1960. Rule 597 reads:-

"597. Investigating Officer-General duties of. - An investigating officer is not to regard himself as a mere clerk for the recording of statements. It is his duty to find out the truth of the matter under investigation, and not solely to obtain convictions. In order to ascertain the truth he must use the powers of observation, his knowledge of criminals and their methods and any other means that may be available to him in addition to the recording of statements. At an early stage of an investigation he should consult the village crime note book and other records to learn of any matters recorded there which may have a bearing on the case. He must not prematurely commit himself to any view of the facts for or against any person and although he need not go out of his way to secure evidence for the defence in a case in which he has satisfactory grounds of believing that an accused person is guilty, he must always give accused persons an opportunity of producing defence evidence before him and must consider such evidence carefully if produced."

11. In view of above, this petition is disposed of with a direction to concerned police to take all these facts into consideration while completing the investigation.