

(2018) 10 J&K CK 0056

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 787 Of 2017, IA No. 01 Of 2017

Shahid Ashraf Khan And Ors @APPELLANT@Hash State Of Jammu & Kashmir & Anr

Date of Decision : 17-10-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 104, 147, 336, 341, 427, 504, 506

Citation : (2018) 10 J&K CK 0056

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Abrar Ahmed Khan, Sudesh Magotra

Final Decision : Dismissed

Judgement

1. In this petition filed under Section 561-A of the Code of Criminal Procedure Svt. 1989, the petitioners seek quashment of the FIR No.116/2017 dated 23.11.2017 registered at Police Station, Kandi, District Rajouri under Sections 341, 336, 504, 427, 506 & 104 RPC.

2. Brief facts of the case are that petitioner No.1 is a practicing lawyer for last five years and petitioner No.2 is in police presently posted at Jammu. The petitioners Nos.3 to 7 are juveniles and are students. It is further stated that the relationship between petitioner No.9 and the private respondent is not cordial for the reason being, they are engaged in the civil litigation pending before various Courts pertaining to the land and petitioner No.1 has been engaged as Counsel by petitioner No.9. The private respondent approached the counsel and asked him not to appear for petitioner No.9 and also threatened that if he continues to appear he will have to face the dire consequences for the same. It is further stated that since the petitioner No.9 and the private respondent also happens to be the relative and he has also some share in the custodian property bearing Khasra No.1141 measuring 08 kanals and 15 marlas and Khasra No.1141/1 measuring 03 kanals and 13 marlas situated at Kandi, Tehsil Kotranka, left by their ancestors and since there is no demarcation of the land, so the relationship

between them is not cordial and the private respondent by concocting a false and frivolous story registered the FIR No.16/2017 dated 05.03.2017 u/s 447, 427, 336 RPC against the petitioner No.9 and others on the ground that they have entered in the peaceful possession of the land mentioned above. In the said FIR, investigation has been completed and the challan has been produced before the Court of law. Thereafter, the respondent No.2 approached the court of learned Munsiff Kotranka by filing a civil suit pertaining to the aforesaid land on the ground that he is in possession of the land. The learned court vide order dated 02.06.2017 after considering the case of the respondent No.2 directed for maintaining status quo on spot. It is further stated that the petitioners immediately filed the objections before the learned trial court and resisted the suit on the ground that since the property in question is of the custodian nature, therefore, the suit cannot be filed before the learned Munsiff Kotranka. It is further stated that respondent No.2 after lodging the FIR and filing of the suit before the trial court tried to interfere in the peaceful possession of the land bearing Khasra No.1222 measuring 13 kanals and 12 marlas situated at Kandi Kotranka and the father of the petitioner No.9 approached the learned trial court and filed a suit for permanent prohibitory injunction on 11.11.2017 and the learned trial Court directed for maintaining status quo on spot. After receiving the copy of the status quo order, respondent No.2 got furious and threatened petitioner Nos. 9 to 11 and also petitioner No.1 that why he has appeared in the case and now he has to face consequences for that. The private respondent No.2 just to harass the petitioner No.1 and the other petitioners approached the respondent No.1 and registered another FIR No.116/2017 impugned in this petition.

3. Petitioners being aggrieved of the impugned FIR, have challenged the same on the following grounds:

- a) That the impugned FIR is bad in the eyes of the law and cannot sustain the test of law and has been filed only with sole motive of harassing the petitioners.
- b) That FIR impugned is nothing but a sheer abuse of process of law just to harass the petitioners and a careful reading of the impugned FIR shows that the FIR has been registered with the sole motive to harass and pressurize the petitioners may act according to his wishes.
- c) That the impugned FIR is nothing but an outcome of the civil litigation going on between the petitioner and the private respondent before the different courts and has been filed with the ulterior purpose of harassing the petitioners and their counsel.
- d) That the petitioner No.1 is engaged by the petitioner no.9 and the father of the petitioner No.11 all the civil litigations going on between the parties before the court of learned Munsiff Kotranka and also before the other courts and the impugned FIR has been registered with the sole motive to harass the counsel of the petitioner No.9 and father of the petitioner No.11 and the only purpose of

filing the impugned FIR in which the name of the petitioner No.1 has been reflected is to desist the petitioner no.1 from appearing in the cases.

e) That the respondent No.2 is fully aware that he has no chance to succeed in the litigation filed by him and the litigations which have been filed against him by the petitioner No.9 and father of petitioner No.11 before various courts so in order to harass the petitioners he has filed another FIR with a view to harass them. It is worthwhile to mention here that petitioner No.3 to 7 are juveniles and they have been continuously harassed by the police.

f) That since the petitioner No.1 is the counsel of petitioner no.9 and father of petitioner no.11 before various courts and by registration of this FIR criminal law has been set into motion against him and he has been harassed by the agency of the police and is continuously asked not to contest the case of the petitioner No.9 and father of petitioner No.11.

g) That though the petitioner No.1 was harassed from day one of the filing of the vakalatnama and was consistently asked not to appear in the cases but on 27.11.2017 when the petitioner No.1 filed the suit before the court of Deputy Custodian Evacuee Property Rajouri the petitioner No.1 was again engaged as counsel and after arguing the case when the petitioner No.1 came out of the court the respondent No.2 along with some other persons threatened the petitioner No.1 and asked that why he was appeared in the court as counsel for them and threatened for dire consequences.

h) That since the father of the petitioner No.11 namely, Manir Hussain approached the office of the Deputy Custodian Evacuee Property Rajouri on 27.11.2017 and filed the suit pertaining to the land bearing Khasra no.1141 and the private respondent registered the FIR in which the name of the petitioner no.1 who is the counsel engaged by the petitioners have also been reflected and the petitioner No.1 is being harassed by the police and is not able to perform his profession duties.

i) That an advocate who is an officer of the court and is instrumental in delivering the fair justice to whosoever come to the court and is suppose to work in a free and very conducive environment so that ultimate purpose of delivering of justice is achieve but in the present case it has been denied and has been continuously harassed and asked not to appear for the petitioner No.9 and father of the petitioner No.11, therefore, the impugned FIR is nothing but an Sheer abuse of process of law and is required to be quashed.

j) That the allegation in the impugned FIR even if they are taken in the face value and accepted in their entirety do not constitute the offence alleged in these circumstances, therefore, it would be legitimate for the Hon'ble court to hold that it would be manifestly unjust to allow the process of criminal proceeding against the petitioners.

k) That it is a settled law that when at an initial stage no prima facie case is

established and there is no ground further proceed in the case and chances of ultimate conviction are bleak and no useful purpose is likely to save by allowing criminal prosecution to continue the Hon'ble court has a power to quash the impugned complaint along with its process.

4. Learned counsel for the respondent No.1 has filed objections wherein it has been stated that this petition is not maintainable, as investigation is at infancy stage and cognizable offences have been made out against all the petitioners. That petitioners have suppressed the real facts of the case, as such, the same deserves to be dismissed. It is further submitted that the petitioners have no legal right to seek the indulgence of this court for quashing the aforesaid FIR.

5. Heard and considered. The brief facts of case are that on 23.11.2017 a written complaint was lodged by one Layaqit Ali S/o Faiz Mohd Caste Kamlak R/o Kandi Tehsil Kotranka against (1) Shah Mohd. (2) Ali Mohd, sons of Firoz Din (3) Khaliq Hussain s/o Mir Hussain, (4) Mahnaz Begum, (5) Tasveer Begum both wife of Ali Mohd. (6) Mohd Shabi (7) Mohd Fareed, sons of Ali Mohd. (8) Saddam Hussain Shah Mohd. (9) Sariya Begum w/o Shah Mohd. (10) Miri Begum w/o Mir Hussain, (11) Zareena Begum w/o Khaliq Hussain (12) Tabassum Begum D/o Iqbal Hussain (13) Zanib Be w/o Iqbal Hussain (14) Israr Ahmed S/o Iqbal Hussain (15) Yasser Hussain s/o Khaliq Hussain,

(16) Shahid Ashraf Khan s/o Abdul Aziz (17) Zafer Waseem Ahmed s/o Abdul Aziz (18) Manir Hussain s/o Mohd Afsar R/o Kandi Tehsil Kotranka stating therein that on the same day his son namely Zulfqar Ali was on its way from home towards personnel land at Rangbagla Kandi for construction purpose in land bearing Khasra No.1141 measuring 08 kanals and 15 marlas and Khasra No.1141/1 measuring 03 kanals and 11 marlas. The above named persons with criminal intention restrained the way of his son and pelted stones used unparliamentarily language and due to stone pelting, the tin shed of his son damaged totally. On the basis of written complaint an FIR No.116/2017 dated 23.11.2017 stands registered at Police Station, Kandi, District Rajouri under Sections 341, 336, 504, 427, 506 & 104 RPC and the investigation of the case was started. The I.O. visited the spot prepared site plan recorded the statement of the witnesses and during investigation case under Sections 341, 147, 336, 427, 504, 506 RPC has been proved against the above named persons.

6. 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. This court while exercising the power under section 561-A Cr.P.C., Court does not function as court of trial, appeal or revision. Inherent jurisdiction has to be exercised disparity, 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 then High Court shall not exercise power under section 561-A Cr.P.C.

7. In present case, from bare perusal of accusations leveled in FIR, it is evident that cognizable offences are made out. All the pleas taken in the petition and that 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 the 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.

8. As already held, this court cannot appreciate the facts in the instant petition as to whether case as alleged is made out or not, as the investigation is complete and challan is to be produced.

9. In view of above discussion, this petition is dismissed. Interim stay, if any, is vacated. However, petitioners are at liberty to take all pleas of facts or law before Court below at the time of framing of charge. If any such arguments are advanced, the said Court shall decide the question of framing of charge by way of speaking order.