

(2019) 04 J&K CK 0110

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 632 Of 2017, IA No. 01 Of 2017, 01 Of 2018

Shashi Thakur

APPELLANT

Vs

State Of Jammu & Kashmir And Ors

RESPONDENT

Date of Decision : 12-04-2019

Acts Referred:

Constitution Of Jammu And Kashmir, 1956 — Section 103
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 354, 509
Code Of Criminal Procedure, 1973 — Section 154, 156, 156(3)
Constitution Of India, 1950 — Article 226

Citation : (2019) 04 J&K CK 0110

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : R.S. Thakur, D.S. Parihar, A. M. Malik, Himanshu Beotra, Anuj Dewan Raina, B.S.Salathia, Ashish Sharma

Final Decision : Dismissed

Judgement

1. In this writ petition filed under Article 226 of the Constitution of India read with Section 103 of the Constitution of J&K State, the petitioner inter alia seeks the following reliefs:

i) an appropriate writ, direction or order in the nature of mandamus commanding/ directing respondents 1, 2 and 3 to register an FIR against respondent Nos.4 & 5 on the basis of written information dated 16.08.2016 handed over to the Chief Vigilance commissioner, CVC at Jammu on the subject of an attempt made by respondent Nos.4&5 to out-rage the modesty and sexually harassed the petitioner (an offence under Section 354 and 509 of the Ranbir Penal code) while exercising their powers as the then Director of the vigilance organization and the Deputy Director prosecution Vigilance Organization Jammu, pertaining to a matter of probe-investigation got initiated by the petitioner by order of the court.

ii) The Director General of Police, J&K State respondent No.3 may be directed to

produce in the court entire record of the proceedings initiated on the complaint of the petitioner concerning molestation and sexual harassment experienced by the petitioner at the hands of respondent Nos.4&5 whereupon a statement dated 03.03.2017 of the petitioner was got recorded and the FIR be registered against accused persons under law for commission of a cognizable offence under Sections 354 and 509.

2. In this petition, it has been stated that petitioner is presently serving as the Deputy Superintendent of Police, CID (Control Room and Surveillance Jammu); that on application of the petitioner filed in the Court of learned Special Judge Anti Corruption Jammu, the Senior Superintendent of Police, VOJ filed the status report on 29.01.2016 which was consisting of 19 leaves; that simultaneously, the Vigilance Organization Jammu was conducting probe verification in a complaint received from the Secretariat of the Chief Minister; that both the status reports which have been annexed in the petition as Annexure-A & B, sufficiently revealed involvement nexus of the public servants belonging to the police and the Revenue department for the alleged acts of omission and commission and both the Investigating Officers have strongly recommended for registration of the FIR against the accused persons; that during course of investigation on the Masavi (Latha), the revenue department's land record was noticed and found unauthentic and fake one being used for discharging official functions and it was seized by the Investigating Officer then and there on the spot. The petitioner being a whistle blower in the cause of the complaint was interested to see that the rule of law should prevail at all costs and was keen to remain in touch with updated progress of the case. In November, 2015, petitioner came to know that the verification has been submitted to the Deputy Director Prosecution (Respondent No.5) with recommendations for registering an FIR. Petitioner reached the office of VOJ and saw one Dy.SP coming out of the office of respondent No.5, that Dy.SP and other were protecting criminals; respondent No.4 assured petitioner that the FIR will be registered within a day or two and petitioner need not to bother. As no FIR was registered, petitioner after 4/5 days appeared before respondent No.4 in his office and found respondent No.5 sitting there too. Respondent No.4 told that FIR will be registered soon although they are under tremendous pressure to delay it but for your sake it will be done and petitioner was asked to get closer to respondent No.4; that respondent No.5 left the room and respondent No.4 asked the petitioner to spare sometime with him as he was desperate to have friendship with petitioner. Petitioner got nonplussed by the objectionable conduct of respondent No.4 and felt below dignity and left room forthwith; that outside the office room respondent No. 5 was waiting and he asked the petitioner take it easy and understand the situation. Again the petitioner felt her modesty and dignity being outraged. Thereafter, the petitioner never contacted respondent Nos.4 and 5; that on 16.08.2016, a written complaint was handed over to the Chief Vigilance Commissioner Mr. Kuldeep Khoda at Jammu and this incident was brought to his notice also. In turn a letter dated 30.08.2016 was sent to respondent No. 4 by the SVC and no action taken

against respondent Nos.4 and 5; that on 07.03.2017 the petitioner's statement was got recorded as per the directions of the D.G.P; that respondent No.3-DGP on the complaint of the petitioner, no FIR has been registered against the accused persons i.e., respondent Nos. 4 and 5; that the petitioner is entitled to get registered an FIR against the accused persons for commission of a cognizable offence u/s 354 and 509 of RPC; that vide communication dated 28.08.2014, the DGP J&K State was requested by the Chairperson, J&K State Commission for Women to order thorough investigation into the harassment met by the petitioner at work place by the police personnel, that DGP had ignored it and has not taken any action; that the petitioner is under great threat of getting harmed by any person interested to facilitate the ongoing land grabbing business by law breakers by hook or by crook.

3. Objections stand filed on behalf of all the respondents. Respondent No.3 in his objections has stated that the petitioner has raised mixed questions of law and facts which this court may not like to adjudicate; that on 03.01.2017 a news item under heading 'Cop demands flesh to register FIR' appeared in the local Daily Jammu Express and on the same day the answering respondent herein referred the matter to the Inspector General of Police, Jammu Zone, Jammu for enquiry and report. The matter was got enquired into by the IGP, Jammu Zone through Dy.SP Hqrs, Jammu. The detailed report was forwarded by the IGP, Jammu to the PHQ on 08.04.2017 in which it was observed that the allegations leveled by the petitioner herein were not substantiated during the course of enquiry. It has further been stated in the objections that the petitioner herein had lodged a complaint before the Vigilance Organization against one Zakir Hussaina and Ashiq Hussain alleging therein that they had encroached upon the Nallah/Waterbody by raising construction thereon and a false case bearing FIR No.100/2012 has been registered against her on the basis of the complaint lodged by the said persons and on the basis of said complaint verification bearing 22/2013 was registered by Vigilance Organization which was being monitored by the State Vigilance Commission and during the pendency of said verification, the petitioner approached the State Vigilance Commission vide application dated 16.08.2016 stating therein that enquiry officers have recommended registration of case against the erring officials and land grabbers but the Deputy Director Prosecution Vigilance and Director Vigilance have started exploiting the petitioner herein by demanding undue favour, which were refused to them. The said complaint was forwarded by the Vigilance Commission to the Director Vigilance with the direction to bring the enquiry to its logical conclusion. The verification was concluded and report was submitted to the Vigilance Commission as well as to the Anti Corruption Court, Jammu on 02.01.2017; that an application dated 16.08.2016 submitted by the petitioner before the State Vigilance Commission does not make a mention of sexual harassment as published in the news item; that earlier also similar allegations of harassment were leveled by the petitioner against the police officials associated with the investigation of case FIR No.100/2012 before the State Women Commission, which indicate that she is

habitual of leveling allegations against the officers who do not favour her; a similar complaint was also lodged by the petitioner before the State Human Rights Commission to which a detailed report was submitted by PHQ stating therein that the land in question was property of Zakir Hussain and Ashiq Hussain and investigation conducted had prima facie established that the petitioner herein and her PSOs had demolished the old erected wall of the said land. It has further been stated that as per the report of Director Land Records the petitioner did not cooperate with the Committee headed by Director Land Records, Jammu and did not allow them to conduct measurement of the land falling with her compound and did not even provide the requisite documents to the SDM. The Enquiry Officer (Dy.SP Hqrs Jammu) has specifically mentioned as under:

".....Next day she submitted her statement that had no clear mention of sexual abuse but was more of general in nature . But after one day she suddenly landed in the reader section of undersigned in the absence of undersigned and asked for her statement to read. After reading the statement she forcibly caught hold of it and took it along with her, leaving another statement in the office. However, both the entries of her visit are available in the record of office of undersigned...."

4. Similarly, respondent No.4 has stated in his reply that the writ petition has been filed as counterblast proceedings just to put undue pressure upon respondent as well as to malign and defame his clear service career. The respondent, who is Director Vigilance, has stated that the petitioner has not complied with the provisions of Sections 154 and 156 of the Criminal Procedure Code, so the writ petition is not maintainable; that the allegations leveled in the writ petition are totally baseless and completely wrong; that as alleged by the petitioner that she approached the answering respondent in the month of November, 2015 but there was no occasion to approach him as during the month of November, 2015 nothing regarding the verification being conducted on her complaint was pending before him or in the Central Office of Vigilance Organization; that the conduct and service profile of the answering respondent being unblemished and has been decorated with various prestigious police and service medals. From perusal of the complaint enclosed in the petition when it was compared with the original complaint, it was found that there is contradiction and difference between both the complaints.

5. The respondent No.5 has taken almost the same objections as taken by respondent No.4 in this petition.

6. Heard learned counsel for the parties and perused the record. Counsel for petitioner has reiterated all grounds taken in memo of petition; whereas counsel for respondents has relied upon their objections. Before proceeding ahead, the contents of complaint reads are reproduced as under:-

"To

The Chief Vigilance Commissioner,

Panama Chowk, Jammu.

Sub: Application for your personal intervention for early registration of FIR as the facts of the enquiry reports are being tampered with to protect the guilty.

Sir,

It is very unfortunate that officer is being harassed Vigilance Organisation.

Consequent upon the enquiry No.22/13 State Vigilance Organisation ordered by Chief Minister Secretariat about three and a half years back the fake latha and other documents seized. The misdeeds of local police, revenue deptt. and land grabbers were exposed about three years back but it took three long years to complete the enquiry. Two I/Os who worked on the ground level, under much pressure from the superiors have recommended FIR against the erring officers and land grabbers. Now Director Vigilance Mr. Alok Puri and Deputy Director Prosecution started exploiting the complainant (me) by demanding undue favour, which were refused to them. Annoyed with all this Deputy Director Prosecution excluded the corrupt police officers from the FIR after obtaining handsome consideration. Now Director Vigilance is busy in protecting Rev. Deptt. by writing irrelevant letters to D.C. Jammu and SP South just to delay, prolong and dilute the evidences, change the course of enquiry and tampering with facts to protect the guilty. It is more than one and a half month past a drafted FIR is lying on his table but no action is taken.

I humbly request your goodself to personally intervene and go through the file.

So that all the facts pertaining to the case are revealed.

Proofs of all the criminal misdeeds of land mafia and their misdeeds are lying with me.

Thanking you.

Yours faithfully

Shashi Thakur

DySP 4th Sec. Bn."

7. From bare perusal of contents of complaint, it is evident that it does not bear any date, time month and years of alleged occurrence; a general allegation has been leveled that accused-respondent no.4, who was Director Vigilance at relevant time and respondent no.5-Deputy Director Prosecution, started exploiting her by demanding undue favour. These allegation cannot constitute offences under section 354/509 RPC. Further, this complaint has not been lodged to concerned police but to Chief Vigilance Commissioner, who is not competent officer under Cr.P.C. to lodge FIR. Complainant has never approached competent police officer to lodge FIR in terms of section 154 Cr.P.C.

8. Next, I will deal with the objection with regard to maintainability of this writ

petition thereby directing the concerned police to register FIR.

9. In case titled, Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage reported in 2016 (6) SCC 277, the Hon'ble Supreme Court has held as under:-

"This Court has held in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409], that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156 (3) CrPC. If such an application under Section 156 (3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156 (3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156 (3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court."

10. In present case, admittedly petitioner neither has complied with the mandatory provisions of Section 154 Cr.P.C. nor has approached the magistrate concerned before knocking at the door of this Court.

11. In view of what has been discussed above and law on the subject, this petition is not maintainable. This petition is dismissed accordingly.