
(2019) 02 J&K CK 0102

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 187 Of 2010

Sumit Kakkar And Anr

APPELLANT

Vs

State Of Jammu & Kashmir And Anr

RESPONDENT

Date of Decision : 22-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3), 482
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 294, 354, 506, 509

Citation : (2019) 02 J&K CK 0102

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Yasser Ejaz Tak, Vishal Bharti

Final Decision : Allowed

Judgement

1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C) petitioners seek quashment of FIR No. 166/1010 dated 16.11.2010 registered with Police Station, Bari Brahmana, District Samba, for commission of offences under sections 294, 354, 506 RPC against the petitioners. They also sought quashment of the complaint filed by respondent No.2 before the learned Chief Judicial Magistrate, Samba, upon which the aforesaid FIR has been registered.

2. The case of the petitioners is that petitioner No.1 is a highly qualified person and is presently working as Plant Head in M/s Coromandel International Ltd., which is internationally reputed company for the manufacture of pesticides at Bari Brahmana, Jammu and petitioner No.2 is working as Manager Accounts in Jammu Unit of the same company. Both the petitioners are highly qualified and responsible persons handling the important positions in the company which is renowned worldwide in the business of pesticides. It is stated that company has set up one unit at Bari Brahmana, Jammu, where both the petitioners are working. It is further stated that respondent No.2 came to be selected as Officer, HR & Administration for Jammu unit of the company on 10.9.2010, as

Probationer, by a panel in which both the petitioners were members. It is only on the recommendations of both the petitioners due to which the respondent No.2 was successful in getting appointment in M/S Coromandel International Ltd., at Bari Brahmana, Jammu and since day one of her joining in the said unit of the company, the respondent No 2 created one or the other problem which made the working of the whole unit almost impossible as every employee was facing difficulty.

3. Learned counsel for the petitioners stated that the complaints received by the Plant Head are so numerous that even if the instances are given in the present petition, the same shall become a thesis, which clearly show that how respondent No.2 has lodged complaint pursuant to which FIR impugned has been registered by the respondent No. 1 only to wreak vengeance against the petitioners with further intention of scuttling the disciplinary proceedings initiated against respondent: No.2. It is stated that at one point of time, even the Commercial Head of M/S Coromandel International Ltd; and other senior officers of the company tried to counsel the respondentNo.2, but that also was without any result.

4. Learned counsel for the petitioners further contends that when the petitioner No.1 started initiating action against respondent No.2, she filed false & frivolous complaint before the Managing Director of the Company. The Managing Director got the complaint verified at its own level and he was also of the opinion that respondent No.2 is not a fit person to be permitted to work in the unit of the company at Bari Brahmana, Jammu, therefore, recommended initiation of action against her. It is stated that respondent No. 2, pre-empting that she is going to be removed from the services of the company, filed a false & frivolous complaint before the Chief Judicial Magistrate, Samba, on 15.11.2010, who forwarded the same to respondent No.1 under section 156 (3) Cr.P.C., and respondent No.1 registered the FIR No.166/2010 dated 16.11.2010 under sections 294, 354 506 of RPC. It is further stated that earlier to 15.11.2010, the respondent had made two complaints on 09.11.2010 & 12.11.2010. It is stated that the respondent No.2 had filed totally false & frivolous complaints, inasmuch as, she was not allowed to enter the factory premises after 08.11.2010. Thus, the aforesaid FIR alongwith complaints show that no offence has been made out against the petitioners and it is only the figment on the part of the respondent No. 2 to somehow implicate the petitioners.

5. I have considered the rival contentions. Law with regard to inherent power of High court has now been well settled. In AIR 2017 SUPREME COURT 37 in case titled State of Telangana v Habib Abdullah Jeelani & ors., 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.

6. As per above law, a complaint/FIR is liable to be quashed, if it does not disclose any offence or is frivolous, vexatious or oppressive.

7. In present case, respondent no.2 filed a written complaint against the petitioners before CJM, Jammu on the allegations that she has been appointed as H.R and Adm. Officer in Coromandel International Limited Jammu plant; her joining date was 10th of Sep. 2010; from the date of joining, office management especially Sr. Plant Manager Mr. Sumit Kakkar, Dy. Manager, Accounts, D. Lakshmanan, have been abusing, harassing and manhandling her besides using abusive and unparliamentarily language. They used to telephone my ailing father and harassing my mother also. When my mother approached the said officer, the contractual security (NISA) did not allow my mother to meet the said officer, moreover, they pressurizing me to leave the job, which I resisted. The above said officer usually tried to hurt my dignity and my consciousness. Apart from all this, they unnecessarily criticized and commented on my religious and unnecessarily tried to interfere in my personal affairs. Driver of the said plant namely, Tej Krishan talks vulgar and misbehaved with her. The authorities won't allow her to make entry in the premises. Moreover for my routine works, they never provided any proper H.R. details to her. As per their misconduct is concerned, they usually misrepresented my conversation to higher authorities. They specifically Mr. Kakkar usually tried to misguide her. Instead of giving any proper guidance, showing eyes to her. Unnecessarily scolding is their daily routine. Accounts department never provides receipts to her. Moreover, they pressurized her for the quick account settlement. Accounts Department always make unnecessary interference in my HR department. When her mother came to know about all the conditions, they even mistreated her mother and did not allow her to talk to any concerned officer. They treated her as uncivilized and uneducated person. Her articles in Almirah were missing including LOC of Amway. I wanted to lodge FIR but SP of Bari Brahmana Police Station Mr. Sanjay Kotwal refused to accept the case. She wants to bring some more points indirectly are 1. Physical assault 2. Threatening of life, 3. Not allowing to perform her duties. 4. Using filthy language 5. Hurting dignity and consciousness 6. Mental harassment. 7. Physical harassment 8. Hurting self-respect.

8. This complaint was referred by JMIC (CJM) to police for investigation in terms of section 156(3) Cr.P.C.

9. From the perusal of contents of complaint, it is evident that there are no essential ingredients of section 294/354/509/RPC. The allegations in complaint appears to that of interfering into complainant's day to day official work; there is no whisper as to commission of obscene Act or recite or utterance of any obscene songs or balled words in or near public place for constituting offence under section 294 RPC; similarly there is also no mention of criminal assault with intention to outrage modesty of complainant, which is essential ingredient for constituting offence under section 354 RPC and there is also no averments of uttering any gesture or act intended to insult the modesty of complainant which are essential elements for offence under section 509 RPC.

10. It is also a fact that complainant was suspended and CHARGE SHEET-CUM-SUSPENSION PENDING ENQUIRY NOTICE was given by Petitioner no.1 to her (complainant) on 22.11.2010 under various heads; which are non furnishing of the requisite data to Mr. Ashish of M/s Ma Foi and there was a considerable delay of 10 days; non furnishing of the requisite data to Mr. K.S.P. Rao working at Navi Mumbai even after repeated requests; the SAP HR forms of new joiners Mr. Sanjay Pandey and Mr. Anil Gupta were delayed causing serious problems in getting their salaries for the month of October-2010; she locked the pantry boy in the pantry on 04.11.2010 by locking the doors with him trapped inside for having delayed serving water to you as he was busy with serving of Lunch during regular lunch hours.

11. Complainant filed reply and after detail inquiry conducted by independent inquiry officer Mr. Ashwani Khajuria, Advocate, charges were found proved on 01.03.2011; her services were thereafter terminated on 30.11.2011.

12. In view of above facts and circumstances of the case, I am of the view that present criminal proceeding has been manifestly attended with mala fide and 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. Even otherwise allegations made in the complaint on the basis of which impugned first information report has been registered, 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.

13. Hence, the instant petition is allowed. FIR No.166/1010 dated 16.11.2010 registered with Police Station, Bari Brahmana, District Samba, for commission of offences under sections 294, 354, 506 RPC against the petitioners, is quashed.