

IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

CRMC No. 334/2018

IA No. 01/2018

Reserved on 16.03.2021.

Pronounced on 02.04.2021

Nowshad Ahmad Rather

...Petitioner(s)

Through: Mr. Shafaqat Nazir, Adv.

Vs.

State Through Police Station Kothibagh Sgr. & Anr.

...Respondent(s)

Through: Ms. Saba Gulzar, Assisting Counsel vice Mr B. A. Dar,
Sr. AAG

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The present petition has been filed by the petitioner for quashing of FIR bearing No. 74/2018 registered with Police Station Kothibagh, Srinagar on 03.08.2018 under Section 353, 506 RPC on the following grounds:

(a) That the FIR impugned has been registered against the petitioner to punish the petitioner for entering into an argument with respondent No. 2 and then taking to social media and also for approaching His Excellency the Governor of the then State against the erring police official, who harassed and humiliated the petitioner without any fault.

(b) That the alleged occurrence took place on 28.07.2018 but the FIR against the petitioner has been registered on 03.08.2018 and no justification has been given by the concerned Dy. SP in his complaint as to why the FIR has not been lodged on same date and as to why such delay has been crept into the registration of the FIR and as

such, it becomes clear that the FIR is the result of afterthought and the FIR ,as such, is a result of vengeance and is based on *mala fide*.

(c) That the petitioner is a gazetted officer working as Dy. Director in the Floriculture Department and there was no occasion or reason available to the petitioner for obstructing the respondent No. 2 from discharging his lawful duties. The only sin which the petitioner has committed is that the petitioner sought answers from the official on duty/respondent No. 2 as to why the petitioner is being prevented from attending his duties when there is no lawful justification available for the same. It is further stated by the petitioner that he was made to run from pillar to post for the purpose of attending his duties and it is the concerned police officer who is actually guilty of preventing the petitioner from discharging his official duties.

2. Along-with the petition, the petitioner has placed on record the copy of the challan dated 28.07.2018 issued by the respondent No. 2, complaint made by the petitioner to the J&K Grievance Cell, post uploaded on Facebook and also the FIR in question.
3. Response stands filed by the respondents in which it is stated that Police Station Kothibagh, Srinagar received a written docket from Dy.SP Traffic, City South, Srinagar, dated 28.07.2018 that while performing duty at Radio Kashmir Crossing, one Nowshad Ahmad Rather S/o Gh. Hassan R/o Hardu Shiva, Sopore had parked his vehicle Swift bearing registration No. JK05D-0533 in the No Parking Zone. The Dy. SP traffic approached the accused person and advised him to remove his vehicle from No Parking Zone but instead of following the law, the accused person argued, threatened and obstructed him from performing his lawful duties etc. and on receipt of this docket, FIR bearing No.

- 74/2018 under Section 353, 506 RPC was registered and investigation was started. The investigation was closed as challan against the petitioner and charge sheet was produced before the court of Additional Munsiff, Srinagar on 08.11.2018 and the case is under trial.
4. Learned counsel for the petitioner Mr. Shafqat Nazir, has vehemently argued that the FIR has been lodged with malice and just to harass the petitioner as the petitioner had raised his voice against the high-handedness of the respondent No. 2 in social media and also before His Excellency the Governor. During the course of hearing, the Learned Counsel also produced the challan filed against the petitioner sub-judice before Additional Munsiff, Srinagar.
 5. On the contrary, Ms. Saba Gulzar, Assisting counsel, appearing vice Mr B. A. Dar, Sr. AAG has vehemently argued that as the challan stands filed, the present petition is not maintainable and the FIR was not actuated with malice.
 6. Heard and perused the record.
 7. Before appreciating the rival contention of the parties, it would be appropriate to have the brief resume of the averments made by the petitioner in his petition.
 8. It is stated that the petitioner is working as a Dy. Director in the Department of Floriculture. On 28.07.2018, the petitioner was driving his vehicle bearing registration No. JK05D-0533 towards his office located at Emporium Garden Srinagar. Due to some political rally in Sheri Kashmir Park, the petitioner was prevented by traffic police officer from proceeding towards his office at Polo View near GPO Srinagar and was advised to take TRC route which the petitioner did and the petitioner was again stopped by police near the under-construction flyover outside the office of the petitioner and the petitioner found the road closed by the police. The petitioner approached the police officer who was Dy. SP by rank namely Sajad Ahmad/respondent No. 2 and requested him to allow the petitioner to

proceed towards his office which was only a stone's throw away from the said place, however, the respondent No. 2 not only prevented the petitioner from attending his duties but also abused and humiliated the petitioner. The petitioner was harassed on spot in full public gaze and ultimately the petitioner was advised to take up the matter with concerned SSP which the petitioner did, however, the petitioner could not motivate the police man on duty to allow the petitioner to reach his office on time along-with his vehicle. Ultimately, the petitioner's vehicle was seized by the police officer on duty and the petitioner was wrongly booked under Sections 109-II, 179, 177 of Motor Vehicles Act and the petitioner was made to pay a fine of Rs. 1500/- for daring to approach senior police office with his grievance. The petitioner being humiliated and disgusted immediately lodged a complaint before His Excellency the Governor of the then State through Grievance Cell. The petitioner in his complaint narrated how he was humiliated and harassed and how the vehicle of the petitioner was taken away though the vehicle of the petitioner was neither parked in a No-Parking-Zone nor the petitioner had done any illegal activity. The petitioner also narrated in the complaint that the petitioner was harassed only for joining issue with the police officer on duty as the petitioner had perhaps hurt the ego of the officer on duty. The petitioner also uploaded a Facebook post therein narrating the whole story as to how the petitioner was humiliated and harassed by the people who are otherwise meant to protect life, honour, dignity and liberty of the citizen. The petitioner thereafter was shocked to know that the respondent No. 1 has registered an FIR on 03.08.2018 on the complaint of Dy. SP concerned i.e. respondent No. 2 under Section 353, 506 RPC when the alleged occurrence had taken place on 28th July 2018.

9. The very first objection that has been raised by learned counsel for the respondents is that the challan stands filed and as such the FIR cannot be quashed. This issue is no more res-integra as the Hon'ble Apex Court in the case titled **Joseph Salvaraj A. v. State of Gujarat, reported in (2011) 7 SCC 59** has observed:

6. After completion of the investigation, as per the FIR lodged by the complainant on 5-9-2006, the appellant was arrested at Chennai for commission of the said offences on 17-11-2006. He was thus constrained to file an application under Section 437 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as “the Code”) for grant of bail to him. The same was granted to him on the conditions mentioned in the order dated 22-11-2006. **The appellant, thereafter, was constrained to file the petition under Section 482 of the Code in the High Court of Gujarat at Ahmedabad, with a prayer for quashing of the FIR bearing CR No. I-371 of 2006 registered with Odhav Police Station and to stay further investigation in the case. The said application came to be considered before the learned Single Judge on 11-1-2007. By that time, charge-sheet was already filed before the competent criminal court. Thus, the learned Single Judge, was of the opinion that it was not a fit case to be entertained and refused to hear the petition on merits, even though the appellant was given liberty to file an application for his discharge before the trial court. It may be noted that even in its impugned order the learned Single Judge has emphasised that he had not considered the case on merits. Thus the appellant's petition was dismissed and interim order granted in his favour was vacated.**

19. The appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years, even when admittedly a civil suit has already been filed against the appellant and Respondent 4 complainant, and is still sub judice. In the said suit, the appellant is at liberty to contest the same on grounds available to him in accordance with law as per the leave granted by the trial court. It may also be pertinent to mention here that the complainant has not been able to show that at any material point of time there was any contract, much less any privity of contract between the appellant and Respondent 4 complainant. There was no cause of action to even lodge an FIR against the appellant as neither the complainant had to receive the money nor was he in any way instrumental to telecast “GOD TV” in certain areas of Ahmedabad. He appears to be totally a stranger to the same. The appellant's prosecution would only lead to his harassment and humiliation, which cannot be permitted in accordance with the principles of law.

20. Thus, looking to the matter from all angles, **we are of the considered opinion that the prosecution of the appellant for commission of the alleged offences would be clear abuse of the process of law. The FIR under the circumstances deserves to be quashed at the threshold. We accordingly do so. The appeal is, therefore, allowed. The order of the learned Single Judge is set aside. The FIR dated 5-9-2006 lodged by Respondent 4 complainant with Odhav Police Station, Ahmedabad stands quashed and all criminal proceedings emanating therefrom also stand quashed.**

11. In the above mentioned case, the High Court had refused to quash F.I.R on the ground that during the pendency of the petition under sec 482 Cr.P.C, the charge sheet stood filed but the Apex Court did not approve the course adopted by High Court and quashed the F.I.R along with consequential proceedings. The principle laid down by Apex Court in judgment (supra) were reaffirmed by Apex Court in ***Anand Kumar Mohatta v. State (NCT of Delhi)***, reported in (2019) 11 SCC 706 and relevant para is reproduced as under:

14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge-sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in *Joseph Salvaraj A. v. State of Gujarat* [*Joseph Salvaraj A. v. State of Gujarat*, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23] .

12. So merely filing of challan would not divest the court of its powers to quash the FIR provided the petitioner makes out a case for quashing of FIR as such the first contention of the respondents are rejected.

13. Now the only issue that is to be considered by this Court is as to whether the impugned FIR was lodged with malafide and to harass the petitioner or not. It is an admitted fact that on 28.07.2018, the petitioner was challaned by the respondent No. 2 for commission of offences under Section 190-II, 179, 177 Motor Vehicles Act and on the same date the said offences were compounded by the respondent No. 2 by imposing a fine of Rs. 1500/-. The perusal of the challan annexed as Annexure-A issued by the respondent No. 2 reveals that there is no mention as to whether the respondent No. 2 was obstructed in performance of his duty by the petitioner or not and assuming any such offence under Section 353, 506 RPC was committed by the petitioner, the respondent No. 2 would have immediately lodged FIR against the petitioner for the commission of offences under Section 353, 506 RPC. Rather the mere

factum of punishing the petitioner for traffic rules violations substantiate the contention of the petitioner that false and frivolous FIR has been lodged against the petitioner with ulterior purpose particularly when there is no whisper either in the FIR or in the charge sheet filed against the petitioner that the petitioner was fined for violation of traffic rules. Rather punishing the petitioner for violation of traffic rules negate the story of the respondent No.2 that he was obstructed by the petitioner in performance of his official duties. The perusal of the statement of the respondent No.2 recorded under sec 161 Cr.P.C reveals that that the has no where deposed that he was prevented by the petitioner in performance of his official duties. Rather he has stated that the petitioner had altercation initially with his staff and then he had an altercation with him and the petitioner even resorted to sloganeering so as to attract the attention of the public. Lastly, he stated that the petitioner threatened him. There is no whisper in his statement that the petitioner was challaned for violation of traffic rules and made to pay fine of Rs. 1,500/ particularly when the challan evidencing the compounding of the offences have been issued by the respondent No.2.

14. The respondents in their objections have not disputed or controverted the factum of the complaint made by the petitioner to the J&K Grievance Cell regarding the unruly behaviour of the respondent No. 2 with the petitioner and it is evident that the said FIR was lodged only after the petitioner made the complaint before the J&K Grievance Cell and uploaded his story of harassment at the hands of respondent No. 2 on the Facebook. Generally, the delay in lodging FIR is not fatal to the prosecution case provided the delay is explained and the same is to be considered at the time of the final disposal of the challan but at the same time, when it is apparent from the record that the said FIR was lodged only as a tool to harass the petitioner then the delay in lodging FIR shall certainly be a relevant factor for considering the motive behind lodging FIR. When the respondent No:2 challaned the petitioner for violation of traffic rules then what prevented the respondent No:2 from lodging

F.I.R against the petitioner on the same day when it is evident from FIR that it was lodged with respondent No:1 on 03.08.2018.

15. In ***Manoj Kumar Sharma v. State of Chhattisgarh***, reported in (2016) 9 SCC 1 Apex Court has observed:

30. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In our opinion, such extraordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by Respondent 2 herein against the appellants, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, Respondent 2 herein has tried to rope the appellants in criminal proceedings. We are of the confirmed opinion that continuation of the criminal proceedings against the appellants pursuant to this FIR is an abuse of the process of law. Therefore, in the interest of justice, the FIR deserves to be quashed. In this context, it is apt to quote the following decision of this Court in *Jai Prakash Singh v. State of Bihar* [*Jai Prakash Singh v. State of Bihar*, (2012) 4 SCC 379 : (2012) 2 SCC (Cri) 468] wherein it was held as under: (SCC p. 383, para 12)

“12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eyewitnesses present at the scene of occurrence. **If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first-hand account of what has actually happened, and who was responsible for the offence in question.**”

16. Hon'ble the Apex Court in the case of “Indian Oil Corporation vs. NEPC India Ltd. And Ors”, reported in (2006) 6 SCC 736, has held as under:-

12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao*

Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

17. In *Sunder Babu v. State of T.N.*, (2009)4SCC244, Apex court was considering the challenge to the order of the Madras High Court where application was under Section 482Cr.P.C. to quash criminal proceedings under Section 498A IPC and sec. 4 of the Dowry Prohibition Act, 1961 was dismissed. It was contended before Apex Court that the complaint was nothing but an abuse of the process of law and

allegations were unfounded. The prosecuting agency contested the petition filed under sec. 482 Cr.P.C. taking the stand that a bare perusal of the complaint discloses commission of alleged offences and, therefore, it is not a case which needed to be allowed. The High Court accepted the case of the prosecution and dismissed the application. Hon'ble Apex Court referred to the judgment in Bhajan Lal's case and held that the case fell within Category 7. The Apex Court relying on Category 7 has held that the application under sec. 482 deserved to be allowed and quashed the proceedings.

18. Thus this Court while considering the law laid down by Apex Court has no hesitation in holding that FIR has been lodged with ulterior motive and maliciously to harass the petitioner and to dissuade the petitioner from raising any grievance against the conduct of the petitioner no:2.
19. In view of this, FIR bearing no: No. 74/2018 registered with Police Station Kothibagh, Srinagar on 03.08.2018 under Section 353, 506 RPC is quashed resulting into quashing of all consequential proceedings.

(RAJNESH OSWAL)
JUDGE

SRINAGAR
02.04.2021
Altaf

Whether the order is speaking: Yes

Whether the order is reportable: Yes