

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

{Through Virtual Mode}

CRMC No.36/2018

Dated: 3rd of June, 2021.

Dara Singh

... Petitioner(s)

Through:

Ms Asma Rashid, Advocate.

Versus

State of JK & Ors.

... Respondent(s)

Through:

Mr B. A. Dar, Sr. AAG.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge.

(JUDGMENT)

01. Through the medium of the instant Petition, the Petitioner is seeking quashing of FIR bearing No. 58/2017, registered in Police Station, Maisuma, Srinagar, under Sections 420 and 5467 of the erstwhile Ranbir Penal Code (RPC), *inter alia*, on the grounds detailed out herein-below:

- I. *That the petitioner during the preliminary inquest proceedings, informed the department that there is no such dispute existing at all between him and the Bank and even if there was any, having regard to the fact that the Bank has accepted one time payment of loan liquidation towards car loan and has issued the NOC, as such, the petitioner was reinstated into service and is presently working in Railway Police. The FIR registered against the petitioner now after his retirement and liquidation of loan is liable to be quashed;*
- II. *That the petitioner has not committed any offence and the allegation of production of fake/ fictitious NOC gets absolved once the Bank has issued the NOC. There is no dispute now on account of obtaining loan*

from the Bank concerned and liquidating the loan advance. The Crime Branch has also clarified that since the petitioner has liquidated the loan in full and NOC has been issued in his favour by the Bank concerned and accordingly he is required to be exonerated. Since the matter is now settled, there is no reason for re-investigating the case by the local police i.e. Police Station, Maisuma, Srinagar. The police has unnecessarily registered the case to harass the petitioner. It is submitted that the Police Station, Maisuma has without conducting preliminary enquiry registered the said FIR and without getting any information from the Bank concerned and also without going through the main case. As a matter of fact, there is no complaint from the Bank surviving, it is only on false and frivolous grounds that the said FIR has been registered against the petitioner, that too, without conducting an enquiry into the offence for registration of FIR u/s 154 Cr. P. C. being the procedure established by law in this behalf. The communication referred to in the FIR, on the basis of which Police Maisuma claims to have registered the FIR does not disclose cognizable offence, as such, there was no need to register instant FIR against the petitioner. As submitted above, there is no such dispute between the principal party i.e. Canara Bank and the petitioner, as the petitioner has liquidated the car loan advance in full and the Bank having accepted same has as such issued NOC. It is assumed for the sake of argument without admitting, that there is any such kind of dispute and/ or the department is of the view that the petitioner has committed a misconduct, for the same the petitioner is being proceeded against departmentally and the Police has no jurisdiction to step into it in any manner whatsoever. As such on this ground alone, the FIR is liable to be quashed;

- III. *That the petitioner respectfully submits here that the object behind investigation by police is not only to collect evidence, not possible for complainant or aggrieved party to lay hand upon, but also to weed out matters at the very outset and send for trial only such cases where there is prima facie, sufficient material to connect accused with alleged occurrence/ offence. In the instant case, there is no material or trustworthy evidence collected in support of the claim by the police, as such there was no question of registering the case against the petitioner. On this ground also, the FIR warrants to be quashed;*
- IV. *That the complaint against petitioner admittedly was of civil nature, the concerned party i.e. the Bank has deliberately not chosen to avail civil remedy, if any, available to it as in that eventuality, the party had to pay a huge sum towards court fee to be affixed along with the suit. In any case, the FIR registered against petitioner and proceedings initiated in it are liable to be quashed;*
- V. *That it is settled that whether the information is genuine, whether the information is credible and whether the information is false, these are issues that have to be verified during the investigation of FIR at the stage of registration of FIR, but the Police has not taken any interest in it before registering FIR. The Police has been interested only in pleasing the higher ups, who as submitted above have already reinstated the petitioner into service and also posted him in Railway Police. It is only on wrong notion/ concept that the FIR has been registered otherwise under law the dispute, if any, does not disclose any*

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cognizable offence at all. On the basis of a simple communication, the Police ought to have not registered the FIR against the petitioner who is a government employee and a respectable person in the society commanding high respect and reverence among masses in the locality. The registration of case FIR against the petitioner has got defamed him in the locality/ society, where he hold high respect and regard and as such the FIR is liable to be quashed; and

- VI. *That while perusing the FIR, the complaint/ communication does not constitute any offence u/s 420 & 467 RPC as the dispute, if any, disclosed is of civil nature and that the same stands settled. There is no material prima facie disclosing commission of offence cheating nor are the necessary ingredients of offence expressly alleged in the FIR. Moreover, the allegations set out in the compliant do not constitute offence of which the police has taken cognizance, therefore, in that view of the matter, it is a fit case in which the Hon'ble Court would be pleased to exercise its inherent powers to quash the said FIR, in which the allegations do not disclose and/ or constitute the offence u/s 420 & 467 RPC so as to not only prevent abuse of process of law, but also to secure the ends of justice."*

02. On notice having been issued, the Respondents have filed their Objections in opposition to the maintainability of the instant Petition, Paragraphs 1 to 3 whereof read as under:

"1. It is submitted that during the course of investigation, it transpired that Dara Singh S/o Jodh Singh R/o Mangham Tral who is working as Head Constable in Police Department and is presently posted with Railway Department has managed the certificate fraudulently and produced the same before his department were the said Dara Singh has obtained a car loan from Canara Bank, Budshah Chowk, Srinagar and after obtaining the loan, the said Dara Singh was NPA towards the bank. The accused person fraudulently produced NOC before his department that he has finalized the car loan. The NOC produced by the accused was verified by the department which was not given by the bank authorities. However, in this regard the departmental enquiry was conducted by the Railway Police and matter was forwarded to Sr. Superintendent of Police, District Srinagar for registration of FIR.

Accordingly, a case FIR no. 58/2017 u/s 420, 467 RPC was registered by the P/S Maisuma, Srinagar and investigation was set into motion. During the course of investigation, the statement of witnesses were recorded u/s 161-Cr.P.C. and bank details alongwith some documents were seized and enquiry papers were also seized which are a part of investigation and offences u/s 420, 467 RPC were proved against the Head Constable Dara Singh and has produced anticipatory

bail which was ordered by 1st Additional Sessions Judge, Srinagar and in the instant matter, the statement of witnesses is yet to be recorded.

2. During the course of investigation, the investigating officer received an order from the Hon'ble Court vide dated 05-02-2018, which reveals that "In the meantime further investigation in FIR No. 58/2017 u/S 420, 467 RPC of Maisuma registered against the petitioner shall stay".

3. That in order to unearth the real facts and circumstances of the case, the alleged accused person and witnesses were required to be interrogated, but due to stay in the instant matter, investigation agency could not proceed further into the matter."

03. Heard learned counsel for the parties, perused the pleadings on record and considered the matter.

04. The law is that in exercise of the wholesome powers vested in the High Court under Section 482 of the Criminal Procedure Code, corresponding to Section 561 of the erstwhile J&K Criminal Procedure Code, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of law or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, on which the structure of the prosecution rests and the like, would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law, though justice has got to be administered according to the laws made by the Legislature. The

compelling necessity for making these observations is that without a proper realization of the object and the purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and the contours of that salient jurisdiction.

05. In the law laid down by the Hon'ble Supreme Court in case titled *'State of Haryana & Ors. V. Bhajan Lal & Ors: "1992 Supp. (1) SCC 335"*, the Apex Court has elaborately considered the scope of Section 482 of the Criminal Procedure Code (Cr. P.C). In this case, the Supreme Court had the occasion to determine the extent and power of the High Court to quash the entire criminal proceeding, including the FIR. The case arose out of an FIR registered under Sections 161, 165 of the Indian Penal Code (IPC) and Section 5(2) of the Prevention of Corruption Act, 1947. After noticing the earlier pronouncements on the subject, the Supreme Court detailed, with lace, certain categories of cases by way of illustration where power under Section 482 of the Criminal Procedure Code (Cr. P.C.) can be exercised to prevent the abuse of the process of the Court or secure the ends of justice. Paragraph No. 102 of the judgment provides seven categories of cases where the provisions of Section 482 of the Criminal Procedure Code (Cr. P.C.) can be invoked and these are extracted below:

“i) 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.

ii) 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.

iii) 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.

iv) 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.

v) 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.

vi) 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.

vii) 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.”

06. In the case in hand, from a bare perusal of the pleadings on record, coupled with the appreciation of the law laid down above, what comes to the fore is that the genesis for registration of the FIR in question, as registered against the Petitioner, who is an employee of the Police Department, lies in the factum of car loan having been taken by the Petitioner from the Canara Bank. Thereafter, the Petitioner is stated to have produced NOC with respect to liquidation of the aforesaid car loan before the

Department, which was, later on, found to be not genuine. Accordingly, the Petitioner is stated to have been placed under suspension and departmental proceedings initiated against the Petitioner. Subsequently, the Petitioner stands reinstated in service, while as the Departmental proceedings are going on against him with respect to the aforesaid aspect of production of NOC before the Department *qua* liquidation of car loan from the Canara Bank. When the departmental proceedings are going on against the Petitioner, the registration of FIR would not only amount to initiating parallel proceedings against the Petitioner for the same offences, but would, if allowed to go unabated, also result in violation of the process of law. Besides, the registration of FIR in question was also not warranted due to the fact that the case has a civil lineage or flavor involving civil rights/ obligations of the parties *qua* liquidation of car loan. Furthermore, in light of the mandate of law as laid down by the Hon'ble Supreme Court in the above reproduced judgment, the FIR does not clearly disclose the commission of cognizable offence on the part of the Petitioner as would warrant its investigation. It is a simple case concerning the conduct of the Petitioner as a Government employee which is under investigation before the authorities concerned in the Department where the Petitioner is employed and, thus the registration of FIR, in such circumstances, cannot sustain in the eyes of law.

07. The cumulative effect of all that has been said and done above is that the Petition of the Petitioner is *allowed* and, as a sequel thereto, the FIR

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bearing No. 58 of 2017, registered against the Petitioner at Police Station, Maisuma, Srinagar, for the commission of offences punishable under Sections 420 and 467 of the erstwhile RPC as well as the proceedings, if any, emanating therefrom are quashed.

08. *Disposed* of, along with connected CrIMs on the above terms.

(Ali Mohammad Magrey)
Judge

SRINAGAR

June 3rd, 2021

"TAHIR"

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| i. | <i>Whether the Judgment is reportable?</i> | <i>Yes/ No.</i> |
| ii. | <i>Whether the Judgment is speaking?</i> | <i>Yes/ No.</i> |