

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on:21.09.2021
Pronounced on:24.09.2021

CRMC No.279/2017

JALAL-UD-DIN MIR & OTHERS ... PETITIONER(S)

Through: - Mr. Syed Manzoor, Advocate.

Vs.

STATE OF J&K THROUGH SHO ...RESPONDENT(S)
P/S SUMBAL

Through: - Mr. Hakim Aman Ali, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

- 1) Petitioners have challenged criminal challan arising out of FIR No.104/2009 for offences under Section 366, 376, 109 RPC registered with Police Station, Sumbal, which is stated to have been presented before the Court of Judicial Magistrate, 1st Class, Sumbal.
- 2) According to the petitioners, a false and frivolous FIR bearing No.104/2009 for offences under Section 366, 376, 109 RPC came to be registered against them with Police Station, Sumbal, Sonawari, and after investigation of the case, a challan came to be presented against them before the Court of Judicial Magistrate, 1st Class, Sumbal. It is the case of petitioners that petitioner No.1 had entered into wedlock with the prosecutrix on 30.05.2009 as per Muslim rites. A Nikah Nama and a marriage agreement was executed by petitioner No.1 and the prosecutrix, copies whereof have been placed on record. It is alleged that petitioner No.1

and the prosecutrix lived together as husband and wife for about two months but thereafter parents of the prosecutrix, being not happy with the marriage, lodged a false FIR against the petitioners. It is further alleged that the parents of the prosecutrix took away her custody from petitioner No.1 against her will and wish, whereafter she entered into a wedlock with another person.

3) It is further averred in the petition that in her statement recorded under Section 164-A Cr. P. C after about two and a half months of registration of the case, the prosecutrix implicated the petitioner by speaking falsehood just to wreak vengeance upon them. According to the petitioners, the statement of the prosecutrix recorded under Section 164-A Cr. P. C does not inspire confidence and contents thereof sound preposterous and absurd. On these grounds, petitioners have sought quashment of the criminal proceedings initiated against them on the basis of the challan laid before the trial court.

4) The respondent-State has filed its status report, wherein it has been averred that on 12.06.2009, a written complaint was received by Police Station, Sumbal, from the father of the prosecutrix, wherein it was alleged that his minor daughter had been kidnapped by the petitioners and two other persons. The FIR came to be registered on the basis of this report and investigation of the case was set into motion. Statements of witnesses under Section 161 Cr. P. C were recorded, whereafter, on 24.07.2009, the prosecutrix was recovered from the possession of petitioner No.1. After conducting her medical examination, commission of offence under Section 376 RPC was disclosed and it was also found that the prosecutrix was aged more than 18 years and, as such, instead of offence under Section 363 RPC,

offence under Section 366 RPC was added. Petitioner No.1 came to be arrested on 24.07.2009 and the statement of the prosecutrix under Section 164-A Cr. P. C was also recorded. After completion of investigation of the case, offences under Section 366/109 RPC were found established against one Tariq Ahmad Mir and petitioners No.2 to 4. Besides this, offence under Section 366/376 RPC was found established against petitioner No.1. Accused Tariq Ahmad Mir is stated to have died on 29.10.2013.

5) I have heard learned counsel for the parties and perused the material on record including the record of the challan.

6) A perusal of the statement of the prosecutrix recorded under Section 164-A Cr. P. C reveals that she has, in clear terms, implicated all the petitioners. According to her, she was kidnapped by the petitioners from the house of her aunt which is located at Trehgam. She has gone on to state that she was taken in a vehicle to a place somewhere in Rajasthan and was kept there for about two months, during which period, petitioner No.1 committed rape upon her at least six or seven times. She has gone on to state that the petitioners would keep on changing her location from time to time and after two months she was brought back to Srinagar where police recovered her. She has further stated that petitioner No.1 was interested in marrying her.

7) From the aforesaid statement of the prosecutrix, it is clear that she has implicated all the petitioners and has levelled allegations of kidnapping and rape against them. So far as the contention of petitioners that statement of the prosecutrix was recorded after two months of registration of FIR is

concerned, the merits of the same cannot be determined in these proceedings. The evidentiary value of a statement recorded under Section 164-A Cr. P. C can be assessed and evaluated by the trial court at the time of framing of the charges and the same cannot be done in these proceedings. Similarly, the contention of the petitioners that the petitioner No.1 had entered into wedlock with the prosecutrix cannot be gone into in these proceedings. The validity of the alleged marriage is a question which cannot be gone into in these proceedings.

8) The power under Section 561-A of J&K Cr. P. C (which corresponds to Section 482 of Central Cr. P. C) is not to be exercised as a matter of routine. Such power has to be exercised sparingly with great circumspection so as to avoid miscarriage of justice. The material on record of the charge sheet clearly suggests that it is not a case where it can be stated that no offence is made out against the petitioners or that there has been miscarriage of justice. Therefore, I am of considered view that this is not a fit case where inherent power under Section 561-A of J&K Cr. P. C can be exercised.

9) For the foregoing reasons, no ground is made out which would warrant exercise of power under Section 561-A of J&K Cr. P. C. Petition being devoid of merit is dismissed

(Sanjay Dhar)
Judge

Srinagar
24.09.2021
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No