

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on : 13.10.2021
Pronounced on: 29.10.2021

APPCR No. 23/2014
in
CRMC No. 232/2014(O&M)
IA No. 262/2014
Bail App No. 253/2021
CrIM No. 1515/2021

Sandeep Kumar

.....Appellant(s)/Petitioner(s)

Through: Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate.

Vs

State of J&K

..... Respondent(s)

Through: Mr. Suneel Malhotra, GA.

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

JUDGEMENT

1. The petitioner through the medium of the present petition under section 561-A Cr.P.C. (now 482 Cr.P.C.) has prayed for quashing of the criminal proceedings titled "State versus Ghulam Mohammed & Anr", those are pending against him before the Court of learned Principal Sessions Judge, Kishtwar (hereinafter to be referred as trial court) arising out of FIR bearing No. 13 of 2013 for commission of offences under sections 295, 457, 380, RPC.
2. The petitioner has sought the quashing of the criminal proceedings primarily on the grounds that the evidence relied upon by the prosecution is legally inadmissible because as per the prosecution case the accused No. 1 in the case i.e. Ghulam Mohd made an

admission/confession of the guilt before them, where he stated that the petitioner herein was also an accomplice in that act and in law, no confession is admissible, if the same is made not only to Police Officer but even if it is made in presence of Police Officer. Further the proceedings those are pending against him do not disclose commission of any offence by the petitioner, as such, the proceedings are nothing but an abuse of process of law.

3. The response stands filed by the respondent, in which it is stated that a report was received at Police Station, Marwah, District Kishtwar, from the reliable sources that on 17th of December 2013 certain unknown persons entered the Shiv Mandir, Chanjer, Marwah and broke, open the windows of the Mandir with a common intention of looting essentials, cause damage and hurt the religious sentiments. On this information, FIR bearing No. 13 of 2013 under sections 295, 457, 380 RPC was registered and during the course of the investigation, Investigating Officer visited the site and prepared the site plan and recorded the statements of witnesses etc. and on the basis of evidence collected, offence was proved against Ghulam Mohd. S/o Gani Malik and the petitioner-Sandeep Kumar S/o Narayyana Dass. The accused, Ghulam Mohd was arrested, however, Sandeep Kumar absconded. After completion of the investigation, the charge sheet against the accused Ghulam Mohd and the petitioner-Sandeep Kumar was filed in the competent court of law.

4. Mr. P. N. Raina, Sr. Advocate appearing for the petitioner vehemently argued that there is no evidence against the petitioner and the charge sheet has been filed against the petitioner only on the ground that during interrogation, the co-accused stated that petitioner was also accompanying him. Mr Raina further laid emphasis that even in the disclosure statement made by the accused Ghulam Mohammed, name of petitioner has not been mentioned. He further relied upon the judgment of Apex Court in *Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547*.
5. *Per contra* Mr. Suneel Malhotra vehemently submitted that the co-accused has specifically named the petitioner regarding his involvement in the commission of the offence and as such the proceedings cannot be quashed.
6. Heard and perused the record.
7. A perusal of record challan reveals that on 17th of December, 2013 at about 00.05 a.m. information was received from the reliable source at the Police Station Marwah that at around 07.00 to 07.30 p.m. some unknown person(s) broke open the window of Shiv Temple, Chanjer, Marwah and entered inside the temple, damaged the articles lying in the temple and dispersed them here and there and has/have also taken some articles with them. On this information, FIR bearing No. 13 of 2013 was registered. During the course of investigation, Ghulam Mohd. was arrested and he made disclosure statement with regard to the stolen articles and got them recovered. Further, during his interrogation, he

revealed that petitioner-Sandeep Kumar was also involved with him in the occurrence. The perusal of the challan reveals that none of the witness has been cited as an eye witness to the occurrence. The only incriminating material against the petitioner is that the co-accused during the course of his interrogation disclosed that the petitioner was also involved in the occurrence with him. The witnesses namely PWs Constable Khalid Mustafa, Constable Bahar Ahmed and Constable Mohd. Shafi, were examined by the Investigating Officer and they have also stated that Ghulam Mohd. disclosed during investigation that the petitioner was also involved with him. Except this, there is nothing against the petitioner and even in the disclosure memo, the name of the petitioner is nowhere figuring. The contents of disclosure memo are reproduced as under:

“I have kept one iron hammer, one damaged lamp in the bushes near Shalimar Morh. The information with respect to the same was known to me alone and I can get the same recovered.”

8. Now, the only issue arises for consideration is as to whether on the basis of this evidence, the accused can be proceeded against or not.

In Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547, the Apex Court has held as under:

“54. Proceeding on the basis that it is a confession by a co-accused and still proceeding further that there is a joint trial of the accused and that they are accused of the same offences (ignoring the fact that other accused are absconding and the appellant appears to be proceeded against on his own) and having found that there is no recovery from the residence of the appellant of the counterfeit notes and that there is no other material on the basis of

which even a strong suspicion could be aroused, we would find that the mandate of the law requires us to free the appellant from being proceeded against.”

9 In the instant case, there is even no recorded confession of the co-accused except the disclosure statement as mentioned above. So, this Court is of the considered opinion that there is no material on record that necessitates the continuance of the criminal proceedings against the petitioner.

10 In view of this, the present petition is allowed and the criminal proceedings titled “State versus Ghulam Mohammed & Anr” pending before the court of learned Principal Sessions Judge, Kishtwar are quashed qua the petitioner only and the proceedings against the Ghulam Mohd shall continue.

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11. Since the petition has been allowed and the charge-sheet filed against the petitioner before the trial court has been quashed, therefore, the application has been rendered infructuous. Hence dismissed.

(RAJNESH OSWAL)
JUDGE

Jammu
29.10.2021
Sahil Padha