

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

CRMC No. 816/2018

Reserved on: 03.02.2023

Pronounced on: 10.02.2023

Asif Iqbal Naik

.....Petitioner(s)

Through :- Mr. F.S. Butt, Advocate

v/s

State of J & K & Ors.

.....Respondent(s)

Through :- Mr. Eishaan Dadhichi, GA

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. This petition has been filed under Section 561-A J&K CrPC seeking quashment of the FIR No. 105/2018 dated 28.04.2018 registered at Police Station Kishtwar, wherein the petitioner-accused person was found involved in the commission of offences punishable under Sections 504, 505, 506 & 336 RPC.
2. Petitioner/accused pleaded following facts:-
 - a) that the petitioner is a reputed journalist and associated with Early Times Newspaper, Jammu and Kashmir, as also with Times Now English News Channel and has broken down various stories of national importance. The petitioner earned lot of respect amongst the masses and carved out a special and unique place for himself amongst the journalist fraternity. He constantly highlighting the issues which are relating to masses and also reporting the administrative lapses and police brutalities from time to time due to which he is not in good books of the administration and police officials and they are looking an

opportunity to settle the score so that the petitioner could be prevented from reporting anything incriminating against the administration and police officials of the District. The respondent Nos. 2 to 4 are inimical to petitioner and have number of times directly and indirectly threatened the petitioner of dire consequences and have even warned him that they will file multiple FIRs against him and on the basis of those FIRs the dossier will be forwarded to District Magistrate Kishtwar with recommendation to impose Public Safety Act upon the petitioner.

- b) That District Development Commissioner Kishtwar vide communication dated 25.04.2018 directed the police to register an FIR under Section 504, 505, 506, 336 RPC against the petitioner on the instance of the respondent No 4/complainant with further direction to police to investigate the matter in detail under an intimation to his office; that the allegations leveled against the petitioner that during the intervening night of 12th and 13th April, 2018 the respondent No.4 had chat with India Today Channel during midnight march at India Gate, Delhi and the petitioner who is working as a reporter of Early Times newspaper in Kishtwar took the screenshot of the news bite and uploaded the same on his facebook account which shows the picture of respondent No.4 and anchor/reporter of India Today news channel and the said screenshot also shows the picture of Asifa the eight years old rape and murder victim of Kathua, the petitioner addresses India Today and apprised them that respondent No.4/complainant is hailing from Kishtwar which is 330 km away from Asifa's village and stating to them to check the credentials of persons before uploading anything on TV; that the complainant alleged that besides attack on his privacy

and security the petitioner in his comments responded to the comments of two persons and termed that the complainant is doing this all for cheap publicity; that the petitioner put his security among the public at grave risk by doing such act when he away from home and has exposed and threatened his privacy; due to this propaganda, the public can lynch him over such a sensitive issue and since he has a large family at his native town, his family members especially youth and friends are bereaving in anger and contacted him on phone and there is every apprehension of breach of peace due to attack on his reputation, privacy and security in the open public domain on the internet due to false propaganda by the petitioner on social media.

- c) That the complainant has also criminally intimidated and extorted the petitioner few months back to pay him money and threatened to spoil his image and reputation in public and the matter was reported to police at that time but no action was taken by the police for the reasons best known to them, as such, he is being constrained to request the District Development Commissioner to direct the police to take legal action so that justice is provided to him; that the respondents got furious due to the reporting by the petitioner, as such, respondent No. 4 approached the respondent No. 2 for seeking permission for registration of a complaint against the petitioner under section 505 RPC. The Deputy Commissioner concerned without conducting any preliminary enquiry authorized respondent No. 3 to register FIR and accordingly, FIR No. 105/2018 under sections 504, 505, 506 & 336 RPC was registered by the Kishtwar Police.

3. Respondent Nos. 1 & 3 in their counter has stated that on 25.04.2018 a complaint submitted by one Junaid Hussain Malik S/O Late Gh. Mohd

Malik R/O Ward No.7, Kishtwar against Asif Iqbal Naik S/O Gh. Rasool Naik R/o Shaheedi Mohalla Kishtwar was received from the office of Deputy Commissioner Kishtwar through DPO Kishtwar with the direction for registration of FIR into the matter and accordingly on the directions the SSP Kishtwar FIR No. 105/2018 U/Ss 336, 504, 505, 506 RPC stand registered at Police Station Kishtwar and investigation was taken up. During the investigation, the I.O perused the complaint, issued notice thrice U/S 160 CrPC to the complainant, wherein he was also requested to appear before the I.O for recording his statements and also produce all record available with him, supporting his complaint, but the complainant neither appeared before the I.O, nor produced any record till 28.12.2018, thereafter the investigation of the case was stayed by this Court vide order dated 28.12.2018 and prayed that as and when stay is vacated, further investigation can be taken to a logical end.

4. Respondent No.4 in his counter has also pleaded that he is not aware of any such complaint made against the petitioner before the Deputy Commissioner, Kishtwar which became the basis of FIR impugned in the instant petition. He did not approach either the Deputy Commissioner Kishtwar or to the police for registration of FIR against the petitioner. He received a telephonic call on his mobile from a person, claiming to be the I.O of the case who requested him to record his statement, however, he apprised him that he is unaware of any such complaint attributed to him.
5. Heard learned counsel for the parties and considered the matter. I have also perused the material available on record.
6. According to learned counsel for petitioner, allegations leveled against the petitioner are totally baseless, malicious and do not disclose any offence. It is averred that allegations made in the FIR, even if are taken on their face

value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the petitioner and despite such facts petitioner is being harassed by respondents just to jeopardize his profession and this is a beaten law of the land that where a criminal proceeding is manifestly attended with *mala fide* or maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spit them due to private or personal or some special grudge, the superior courts should with their inherent powers intervene in the matter to prevent miscarriage of justice and abuse of process of law, as such, the same is required to be quashed.

7. Before analyzing the facts emanating from the record of the trial court, it would be apt to notice the legal position as regards the scope of powers of the High Court under Section 482 of the Code of 1973, to interfere with the proceedings/complaint filed before a Magistrate.
8. The power under Section 482 of CrPC can be exercised by the High Court to prevent the abuse of process of the Court and otherwise to secure the ends of justice. The authority of the Court exists for advancement of justice and if any attempt is made to abuse the said authority, the Court has the power to prevent that abuse. These inherent powers of the High Court are wide in their scope. Wider the power, higher the degree of responsibility upon the authority vested with such power to exercise it with circumspection. These powers are generally exercised to secure the ends of justice.
9. Before appreciating the rival contentions of the parties, it is apt to reproduce Sections 499, 500, 504 & 505 RPC as under :

“499. Defamation. — Whoever by words either spoken or intended to be read, or by signs or by visible representations,

makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said except in the cases hereinafter excepted, to defame that person.

500. Punishment for defamation. — *Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

504. Intentional insult with intent to provoke breach of peace.— *Whoever intentionally insults, and thereby give provocation to any person, intending or knowing to it be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

505. Statement conducting to public mischief. — 1[(1)] *Whoever makes, publishes or circulates any statement, rumor or report, —*

(a) with intent to cause, or which is likely to cause, 2 [any officer, soldier, sailor or airman in the Army, Navy or Air Force of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment [which shall not be less than three years but may extend to ten years and shall also be liable to fine.]

[(2) Statement creating or promoting enmity, hatred or ill-will between classes

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intend to create or promote, or which is likely to create or

promote, on grounds of religion, race, place of birth residence, language, caste or community or any other ground whatsoever, feeling of enmity, hatred or ill will between different religious, racial language or regional groups or castes or communities, shall be punished with imprisonment [which shall not be less than three years but may extend to ten years and shall also be liable to fine]

(3) Offence under sub section (2) committed to place of worship.etc.

Whoever, commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment 2 [which shall not be less than four years but may extend to ten years.]”

10. This is not in dispute that the petitioner is a journalist by profession and his job is to gather information and publish the same in the newspaper or in any other media. The information published in the form of news may pertain to issues of national/ international importance or local in nature and in case the respondents were aggrieved of the same and they had some other version, they too could have resorted to the same mode, by getting published their part of version. Even the complainant/respondent No.4 who stated to have lodged the impugned FIR has stated in his objections that he did not approach either the Deputy Commissioner Kishtwar or to the police for lodging of FIR against the petitioner, but the police on its own lodged the FIR, to investigate the matter.
11. So far as allegations with regard to commission of offence under section 504 RPC is concerned, there is no allegation that the petitioner has insulted any one thereby provoking him to break the public peace or commit any

other offence. As such, uncontroverted allegations made in FIR do not even constitute offence under section 504 RPC.

12. Now, it is to be seen as to whether as per the allegations leveled in FIR, offence under section 505 RPC is made out or not. In the FIR it has been mentioned that during the intervening night of 12th and 13th April, 2018 the respondent No.4 had chat with India Today Channel during midnight march at India Gate, Delhi and the petitioner who is working as a reporter of Early Times newspaper in Kishtwar took the screenshot of the news bite and uploaded the same on his facebook account which shows the picture of respondent No.4 and anchor/reporter of India Today news channel and the said screenshot also shows the picture of Asifa the eight years old rape and murder victim of Kathua, the petitioner addresses India Today and apprised them that respondent No.4/complainant is hailing from Kishtwar which is 330 km away from Asifa's village and stating to them to check the credentials of persons before uploading anything on TV and the petitioner by publishing this news item tried to instigate the peaceful public of Kishtwar to commit acts of vandalism, road blockages and acts of destruction of public property. It is reiterated that there is nothing to suggest that the post of petitioner on social networking site caused insult and has potential to provoke breach of peace by public. As per section 505 RPC, the making, publication or circulating of any statement, report or rumour must be with intention to create alarm in the public or any section of public so as to induce them to commit offence against state or public tranquility.
13. In case titled **“Kedar Nath Singh v. State of Bihar”**, reported in **AIR 1962 SC 955**, the Apex Court while upholding the constitutional validity of section 505 IPC has observed:

‘It is only necessary to add a few observations with respect to the constitutionality of Section 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence in making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquillity; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under Section 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Article 19 clearly saves the section from the vice of unconstitutionality.’

14. The Supreme Court in the case titled “**Bilal Ahmad Kaloo vs. State of Andhra Pradesh**”, reported in 1997 (3) Crimes 130 (SC), has held that *mens rea* is a necessary postulate for the offence under Section 505 IPC. Thus, *mens rea* is an essential ingredient of offence under section 505 RPC and as section 505 RPC provides a reasonable restriction on the fundamental right to freedom of speech and expression, therefore, the same is required to be strictly construed. The intention to generate the consequences as contained in section 505 RPC must be forthcoming from the plain reading of the statement/report or rumour and should not be left at the discretion of a particular person. *Prima facie* there is nothing in the FIR that the petitioner desired to generate the consequences as claimed by the respondents and rather he has performed his professional duty.

15. The Supreme Court in the case of [State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors](#) reported as **1992 Suppl (1) SCC 335**, has dealt with the scope of power of High Court under Section 482 CrPC 1973 in an elaborate manner. Paragraphs 102 and 103, which enumerates seven categories of cases, where power can be exercised under [Section 482](#) CrPC, are extracted as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions [of the Code](#) under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though 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 kinds of cases wherein such power should be exercised.

(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 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.*

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

16. The mode and manner in which the impugned FIR has been lodged clearly reflects no offence is disclosed against the petitioner was a journalist and the respondents could have given their version by similar mode but they chose unique method of silencing the petitioner. Needless to say that press is often referred to as the fourth pillar of democracy and freedom of the press is vital for the functioning of any democratic country like India. No fetters can be placed on the freedom of press by registering the FIR against journalists, who perform their professional duty by publishing news items on the basis of information obtained by them from an identifiable source, however, they are also expected to report the coverage with responsibility without any jingoism and divisive publication or telecast.
17. The case of the petitioner squarely falls under the category of cases figuring at Sr. Nos. 1 and 7 as mentioned hereinabove in ***State of Haryana***

v. Bhajan Lal (supra) and as such, the FIR impugned is nothing but an abuse of process of law especially so in view of the response filed by respondent No.4, alleged complainant of the case, who denied to have made any complaint against the petitioner. Mere fact that FIR was lodged only against the journalist and not against the person, who has disclosed the said incident to the journalist *prima facie*, establishes malice also on the part of the respondents.

18. The impugned FIR had been lodged at the directions of District Magistrate Kishtwar, who was not competent to do so in view of the law laid down by the Apex Court in case titled “**Naman Singh @ Naman Partap Singh & Anr. Vs State of Uttar Pradesh & Ors.**”, reported as (2019) 2 SCC 344.

Para 7 of the judgment is relevant which is extracted as under:-

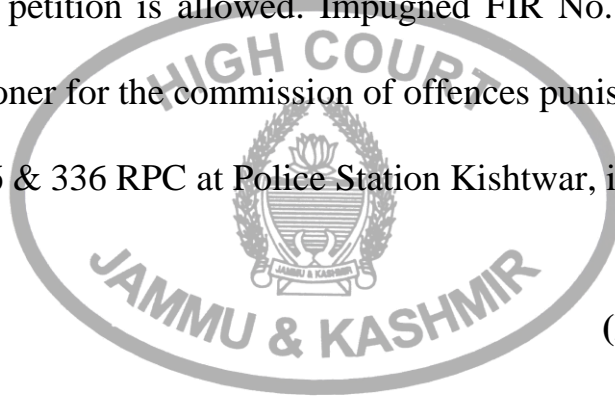
“7.It is therefore apparent that in the scheme of the Code, an Executive Magistrate has no role to play in directing the police to register an F.I.R. on basis of a private complaint lodged before him. If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and the Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an F.I.R. himself in the matter. In such a case, entirely different considerations would arise. A reading of the F.I.R. reveals that the police has registered the F.I.R on directions of the Sub-Divisional Magistrate which was clearly impermissible in the law. The Sub-Divisional Magistrate does not exercise powers under Section 156(3) of the Code. The very institution of the F.I.R. in the manner done is contrary to the law and without jurisdiction.”.

19. The petition succeeds on three counts, firstly that the complainant by filing counter to this petition and who was also present in the court at the time of hearing, has denied to have lodged any complaint so as to base the

impugned FIR, secondly, SHO in his status report has also stated that the complainant had not associated with the investigation despite several requests and thirdly that the District Magistrate as an Executive Magistrate was not competent to issue directions for investigations of the case in view of the law laid down by the Apex Court in case reported as (2019) 2 SCC 344 (supra).

20. For the reasons discussed hereinabove, the instant petition is allowed and the impugned FIR No. 105/2018 dated 28.04.2018 registered at Police Station Kishtwar against the petitioner-accused person for the commission of offences punishable under Sections 504, 505, 506 & 336 RPC, is not sustainable. Impugned FIR is thus liable to be quashed.

21. As a result, petition is allowed. Impugned FIR No. 105/2018 registered against petitioner for the commission of offences punishable under Sections 504, 505, 506 & 336 RPC at Police Station Kishtwar, is hereby quashed.



(M A Chowdhary)
Judge

JAMMU
10.02.2023
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: Yes

