Serial No. 103

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

(Through Video Conferencing at Jammu)

WP (C) No. 793/2020
CM No. 1917/2020
CM No. 7252/2020

Anita Sambyal and others …Petitioner(s)

Through:- Mr. Ashok Sharma, Advocate.

v/s

Union Territory of J and K and others ….Respondent(s)

Through:-Mr. Raman Sharma, AAG.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

1. Petitioner No.1, in this petition is stated to have filed an application in terms of Section 156 (3) Cr. P.C. before the Court of learned Chief Judicial Magistrate Samba, alleging therein that the private respondents on the basis of forged agreement to sell, claim to have purchased a stone crusher including one JCB machine and one Tipper.

2. According to the learned counsel for the petitioners, in the said application, a prayer came to be made before the Court below for directing registration of an FIR against the private respondents under section 420, 476, 468, 504 and 506 RPC.

3. According to the learned counsel, in terms of order dated 03.01.2019, the trial Court directed SHO, Police Station, Samba to investigate the matter and a status report had also been called vide order dated 13.02.2019.

4. According to the learned counsel for the petitioners, statements have also been recorded by the Investigating Officer, in the matter yet the said investigation had not been completed.

5. Perusal of annexure –II, page 14 appended with the writ petition would reveal that the Trial Court has recorded following order on the margin of the said annexure being an application for calling status report from SHO Police Station, Samba filed by complainant-petitioner herein.

"Nemo present put up on 26.02.2019"

6. Perusal of Page 15 of the paper book being annexure to the petition is an interlocutory order recorded by the trial Court on 26.02.2019, reads that "none appears despite the case being called". Report of police is stated to have been received and attached with the file. Perusal of the next interlocutory order dated 11.03.2019 passed by the Trial Court reveals that the petitioner herein-(complainant before the Trial Court) has again not appeared and the case has been adjourned for non-appearance of the petitioner.

7. According to the learned counsel for the petitioners, the investigation of the case has not been completed by the SHO Police Station, Samba, initiated pursuant to the directions of the trial Court (supra) passed in the application (supra) filed by the petitioners under Section 156(3) but on the other hand, respondent No. 2 and 3 on the basis of a complaint filed by respondent No. 5 against the petitioners qua the stone crusher (supra) are conducting an enquiry/ investigation and in the process are harassing the petitioner.

8. Admittedly, petitioners have filed the instant petition being a parallel proceeding to the proceedings already filed by them before the trial Court

under Section 156 (3) and according to the learned counsel for the petitioners, same are pending before the said court, as such, in presence of the said proceedings, the instant petition would not lie. However, learned counsel for the petitioners states that the matter, which is being investigated/enquired into by respondent Nos.2 and 3 against the petitioners pursuant to the complaint filed by respondent No. 5 may be enquired/ investigated, however, in the process the petitioner shall not be harassed, as is being done by respondent Nos. 2 and 3.

9. Mr. Raman Sharma, AAG enters appearance and accepts notice on behalf of the respondents, and expresses no objection to the passing of the direction as prayed by the petitioners.

10. Having regard to the controversy involved in the petition coupled with the submissions made by learned counsel for the petitioners, the reliefs as prayed for by the petitioners qua the proceedings instituted by the petitioner before the trial Court under section 156 (3) Cr. P.C. are incapable of being granted by this Court, as such, the petition shall stand dismissed to that extent. However, the petitioners shall be free to pursue the said proceedings before the Court below in accordance with law. As far as the reliefs as prayed for by the petitioners against the respondent Nos. 1 to 3 are concerned, where under, it is claimed that the respondent No. 2 and 3 are harassing the petitioners while conducting enquiry/ investigation into the complaint filed by respondent No. 5 against the petitioners, the present petition can be disposed of without formally admitting the same with direction the respondent No. 2 and 3 to proceed with the enquiry/ investigation in the matter, however, in the process not to harass the petitioners. Ordered accordingly.

Disposed of, accordingly, along with all connected CM (s).

(JAVED IQBAL WANI)
JUDGE

Jammu
18.12.2020
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HIGH COURT
JAMMU & KASHMIR

RENU BALA
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I attest to the accuracy and
integrity of this document