HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU
(THROUGH VIRTUAL MODE)

CRMC No. 54/2013
IA 69/2013

Abdul Rahim .....Petitioner (s)

Through :- Mr.Abhinav Sharma Sr. Advocate with
Mr. Himanshu Beotra Advocate.

V/s

State of J&K .....Respondent(s)

Through :- Mr. Aseem Sawhney AAG

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

ORDER

1. Through the medium of instant petition, the petitioner has challenged the chargesheet arising out of FIR No. 73/2011 for offence under Section 376 registered with Police Station, Gursai, District Poonch, which is pending disposal before the Court of learned Principle Sessions Judge, Poonch (hereinafter referred to as the 'trial Court'). An alternative prayer to transfer the chargesheet from the Court of learned Principal Sessions Judge, Poonch to any other Court of competent jurisdiction at Jammu has also been made in the petition.

2. The case of the petitioner is that he has entered into wedlock with Nasreen Kousar, who happens to be the prosecutrix in the subject chargesheet, which is pending disposal before the learned trial Court. It is further averred that the father and brothers of the prosecutrix were not happy with this marriage and, as such, at their instance, FIR No. 73/2011, out of which the aforesaid chargesheet has arisen, was lodged against the petitioner and during the investigation of the said FIR, the prosecutrix was coerced to make statement

against the petitioner. It is also averred that the prosecutrix somehow managed to escape from the illegal confinement of her father and brothers and contracted marriage with petitioner on 26.11.2016 as per the Muslim rites. The petitioner has also submitted that he had to file a petition bearing OWP No.1623/2011 before this Court for seeking protection from the father and brothers of the prosecutrix.

3. So far as the prayer with regard to quashing of proceedings in the aforesaid chargesheet are concerned, the same cannot be granted to the petitioner because this Court has, in an earlier petition filed by the petitioner and his wife bearing 561-A CrPC No. 104 of 2012, vide order dated 16.04.2012 declined to interfere in the trial of the case and given liberty to the petitioners therein to raise all the pleas before the trial Court at the stage of considering the case of the prosecution for framing of charge.

4. So far as the prayer with regard to the transfer of the chargesheet is concerned, the same appears to be reasonable and well founded. This is so, for the reason that the petitioner herein is apprehending that the brothers and father of the prosecutrix, who were not happy with the marriage of the petitioner with the prosecutrix, may cause harm to him. This fact is strengthened from the fact that the petitioner had to approach this Court by way of a writ petition for seeking protection against his harassment from the father and brothers of the prosecutrix and this Court, vide order dated 09.12.2011 passed in OWP No. 1623/2011, had directed that no interference into the married life of the petitioner and his wife should be caused. In these circumstances, to ask the petitioner to travel to Poonch where the father and brothers of the prosecutrix (wife of the petitioner) are residing, may not be in the interest of safety of the petitioner.

5. For the foregoing reasons, the alternative prayer made in the petition is allowed and the chargesheet arising out of FIR No.73/2011 dated 27.09.2011 of Police Station, Gursai, pending disposal before the Court of learned Principal Sessions Judge, Poonch shall stand transferred from the said Court to the Court of learned Principal Sessions Judge, Jammu. The Court of learned Principal Sessions Judge, Poonch shall transmit the records of the aforesaid case to the Court of learned Principal Sessions Judge, Jammu forthwith.

6. The petition stands disposed of in the above terms.

A copy of this order be sent to both the Courts below for compliance.

(SANJAY DHAR)
JUDGE

Jammu
16.12.2020
Sanjeev PS

HIGH COURT
JAMMU & KASHMIR

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

SANJEEV KUMAR UPPAL
2020.12.21 10:36
I attest to the accuracy and
integrity of this document