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

Reserved on: 24.07.2024
Pronounced on: 02.08.2024

CRMC No.113/2018

ABDUL HAMID DAR ... PETITIONER(S)

Through: - Mr. S. A. Makroo, Sr. Advocate, with
Mr. Rahil Noor, Advocate & Ms. Naziya Janwari, Advocate

Vs.

STATE OF J&K & OTHERS …RESPONDENT(S)

Through: - Mr. Faheem Nisar Shah, GA, vice
Mr. Mohsin S. Qadiri, Sr. AAG.
Zahoor Ahmad, Dy. SP Crime Branch, Srinagar.

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

JUDGMENT

1) The petitioner has challenged FIR No.08/2018 for offences under Section 409, 420, 120-B RPC read with Section 5(2) of J&K PC Act registered with Police Station, Crime Branch, Kashmir.

2) The facts leading to the registration of the impugned FIR are that a communication bearing No.DATK/Try-1/11330-32 dated 29.12.2017 was addressed by Director, Accounts & Treasuries, Finance Department, Srinagar, Kashmir, to respondent Crime Branch, Kashmir, alleging therein that the inspection party deputed to conduct special audit of pension payment of Sub Treasury, Trehgam, for the

period 01.04.2017 to 31.11.2017 has, prima facie, established misappropriation/embezzlement of Government money to the tune of Rs.86,48,900/ and that the commission of crime stands admitted by the petitioner who was posted as Treasury Officer, Trehgam. It is further recorded in the said communication that the petitioner has deposited the amount in the Treasury vide TR No.01 and 02 dated 07.12.2017. It is also stated in the said communication that the inspection party also observed double drawl/payment of Rs.34136/ made by the petitioner in favour of a pensioner, namely, Showkat Ali Wani, bearing PPO No.221759793, whose pension case stands already transferred by Treasury Trehgam to J&K Bank Trehgam. The communication goes on to furnish the details of the embezzled amount that had been transferred to the bank accounts of certain individuals through online mode with effect from 06.10.2017 to 16.11.2017.

3) On the basis of the aforesaid communication, the impugned FIR came to be registered by the respondent Crime Branch, Kashmir.

4) The petitioner has challenged the impugned FIR on the grounds that pursuant to the registration of the said FIR, the suspension order passed by the Government against the

petitioner stands stayed by this Court in a writ petition filed by the petitioner. It has been further contended that there has been no loss to the State exchequer in the instant case, inasmuch as, admittedly, the petitioner has deposited whole of the amount, which is alleged to have been embezzled, as such, offence under Section 5(2) of the J&K PC Act is not made out against the petitioner. It has been contended that the shortfall in the amount deposited with the Treasury had taken place on account of malfunctioning of the treasury net application software and this fact was time and again brought to the notice of higher authorities by the petitioner, but no action was taken in the matter.

5) The respondent Crime Branch has contested the writ petition by filing its reply. In the reply, after narrating the contents of the impugned FIR, it has been contended that the allegations made in the impugned FIR, prima facie, disclose commission of cognizable offences which are serious in nature, therefore, the matter is required to be investigated.

6) I have heard learned counsel for the parties and perused record of the case including the Case Diary produced by the respondent Investigating Agency.

7) At the very outset, learned Senior Counsel appearing for the petitioner contended that the respondents have registered the impugned FIR without undertaking any preliminary verification. It has been submitted that as per the mandate of law as laid down by the Constitution Bench of the Supreme Court in the case of **Lalita Kumari vs. Govt. of UP & Ors.,** (2014) 2 SCC 1, it is mandatory for an investigating agency to hold a preliminary enquiry in certain categories of cases which includes "corruption cases". The learned Senior Counsel, in order to support his contention, has placed reliance upon the judgment of the Supreme Court in the case of **Charansingh vs. State of Maharashtra and others, (2021) 5 SCC 649** and contended that without there being a preliminary enquiry, the impugned FIR could not have been registered and, as such, the same is vitiated.

8) In the above context, a perusal of the Case Diary would reveal that the respondent Investigating Agency has straight away on the basis of communication dated 29.12.2017 addressed by the Directorate of Accounts and Treasuries to the Inspector General of Police, Crime Branch, registered the impugned FIR without conducting any preliminary enquiry. The question that falls for determination is as to whether it was mandatory for the respondents to undertake preliminary enquiry before registration of the FIR. In this

regard, the observations made by the Supreme Court in **Lalita Kumari's** case (supra) pertaining to necessity for a preliminary enquiry, are required to be noticed. The relevant observations of the Supreme Court in the aforesaid judgment are reproduced as under:

> ***115.*** *Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.*
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> ***[.....]***
>
> ***117.*** *In the context of offences relating to corruption, this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] expressed the need for a preliminary inquiry before proceeding against public servants.*
>
> ***[.....]***
>
> ***119.*** *Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These*

are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

120. *In view of the aforesaid discussion, we hold:*

120.1. *The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

120.2. *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

[.....]

120.5. *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

120.6. *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:*

[.....]

(d) Corruption cases

[.....[

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

9) The aforesaid observations in **Lalita Kumari's** case (supra) came up for discussion in a later judgment of the Supreme Court in the case of **Central Bureau of Investigation (CB) and another vs. Thommandru Hannah**

Vijayalakshmi and another, (2021) 18 SCC 135, and it was observed in the said case as under:

> ***"****The Constitution Bench thus held that a Preliminary Enquiry is not mandatory when the information received discloses the commission of a cognizable offence. Even when it is conducted, the scope of a Preliminary Enquiry is not to ascertain the veracity of the information, but only whether it reveals the commission of a cognizable offence. The need for a Preliminary Enquiry will depend on the facts and circumstances of each case. As an illustration, "corruption cases" fall in that category of cases where a Preliminary Enquiry "may be made". The use of the expression "may be made" goes to emphasize that holding a preliminary enquiry is not mandatory. Dwelling on the CBI Manual, the Constitution Bench held that: (i) it is not a statute enacted by the legislature; and (ii) it is a compendium of administrative orders for the internal guidance of the CBI."*

10) In the aforesaid case, the Supreme Court also considered certain other judgments delivered by it on this issue including the judgment in **Charansingh's** case (supra) on which the petitioner has placed heavy reliance. Thereafter the Supreme Court held as under:

> ***"****Hence, all these decisions do not mandate that a preliminary enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a preliminary enquiry has not been conducted. The decision in Managipet (supra) dealt specifically with a case of disproportionate assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a preliminary enquiry."*
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> *(emphasis supplied)*

11) From the forgoing analysis of the law on the subject, it is clear that it is not mandatory for an Investigating Agency to conduct preliminary enquiry before registration of an FIR in a corruption case and merely because no preliminary enquiry has been undertaken by the Investigating Agency before registering an FIR in a corruption case, the said FIR would not stand vitiated. In the face of this position of law, the contention of the petitioner in this regard is without any merit.

12) That takes us to the contention of the petitioner that no offence is made out against him from the allegations made in the impugned FIR. In this regard, if we have a look at the contents of the impugned FIR, it has been alleged that misappropriation to the tune of Rs.86,46,900/ has taken place in Sub Treasury, Trehgam, during the period commencing 1st April, 2017 to 31.11.2017 and that during this period, the petitioner was posted as Assistant Treasury Officer, Trehgam. The FIR gives the details of the misappropriated amount as also the details of the persons in whose accounts the money has been transferred. The misappropriation of the aforesaid amount has taken place over a period of eight months and it was only when Audit Inspection Party pointed out the aforesaid misappropriation/embezzlement of Government money in

its report, that the petitioner is stated to have taken steps for remittance of the said amount in the Government Treasury by getting the entries reversed from the bank accounts of the beneficiaries. Thus, prima facie, it appears that the petitioner is involved in the commission of cognizable offences relating to embezzlement of Government money. The question whether the aforesaid act on the part of the petitioner was due to inadvertent mistake or due to malfunctioning of the treasury net application software, is a matter of investigation and for the said purpose, the respondent Investigating Agency has to be permitted to undertake the investigation of the case.

13) It is a settled law that even though power under Section 482 of the Cr. P. C is very wide, yet the same has to be exercised with caution and circumspection. While exercising its power under Section 482 of the Cr. P. C, the High Court has only to consider whether the allegations in the FIR disclose commission of a cognizable offence or not and once it is discernible from the allegations made in the FIR that a cognizable offence is made out, the Court has to permit the Investigating Agency to investigate the allegations made in the FIR.

14) In the instant case, as already stated, the allegations made in the impugned FIR do disclose commission of

cognizable offence, as such, it is not open to this Court to stop the respondent Investigating Agency from performing its statutory duty of investigating the allegations made in the impugned FIR. Quashing the impugned FIR in these circumstances would amount to stifling a genuine prosecution, which is impermissible in law.

15) For the foregoing reasons, the petition lacks merit and is dismissed accordingly. The interim order, whereby investigation in the impugned FIR has been stayed, is vacated.

16) The Case Diary be returned to learned counsel for the respondents.

(Sanjay Dhar)
Judge

Srinagar,
02.08.2024
"Bhat Altaf-Secy"

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

Mohammad Altaf Bhat
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authenticity of this document
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