S. No. 135
Suppl. Cause List

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

CRM(M) No. 312/2022
CrlM No. 938/2022

Faizan Fayaz Khan …Appellant/Petitioner(s)

Through: Mr. T. A. Lone, Advocate

Vs.

SHO Police Station Kupwara and Ors. ...Respondent(s)

Through: Mr. Mohsin Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel for R-1 & 2
Mr. Nisar Ahmad Bhat, Advocate for R-3

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

O R D E R

24.12.2024

1. First Information Report No.0167/2022 dated 02.07.2022, registered with Police Station Kupwara, for the offences punishable under Section 354-C of IPC & 66 of IT, is sought to be quashed in the instant petition filed under Section 482 Cr.P.C.
2. The petitioner challenges the FIR in question, *inter alia,* on the ground that the same does not mention any social media platform on which the petitioner has shared the pictures of complainant/private respondent, as such, an evasive and vague allegation has been leveled against the petitioner; that the investigation in FIR in question was conducted and it was found that the petitioner has not shared any picture of complainant/private respondent on any social media platform, actually one boy/person, namely, Hilal Reshi resident of Hyhama has shared video of complainant on his face book account which is self-recorded video, i.e. the video has been recorded by complainant by herself. The said person has received the said video through a chain of 12 persons from a person who had downloaded that from a Facebook Page, namely, Queen Khanzadii. Although other persons' names have come up during course of investigation, however, at the instance of the

complainant FIR has been lodged against the petitioner only, just out of animosity inasmuch assome of these persons are friends of complainant; that the petitioner and the complainant were engaged to each other and complainant was fiancée of petitioner since September 2017, which relation came to be severed by petitioner in January 2022 because of unbecoming activities and behavior of complainant, due to which the complainant developed animosity against the petitioner; that the petitioner and complainant were in legal relationship which is akin to husband-wife relation and besides being a family matter;that police must have conducted the Preliminary Enquiry before lodging impugned FIR as to whether any offence is being made out particularly against the petitioner; that the police ought to have ascertained who is involved in the occurrence, however, the police, on the basis of manipulated information given by complainant against the petitioner out of vengeance, has implicated him in impugned FIR, which is in derogation of set procedure established by law and also abuse of process of law and misuse of the powers by the police; that during course of investigation, it has been found that petitioner has not shared any picture or video in question of the complainant on any social media website, as such, the petitioner requested the Police to drop the petitioner from array of accused in impugned FIR, however, police refused. The reason for refusal of respondent police to drop the name of petitioner from the array of accused is that the petitioner has been named in FIR and after arrest has been released on the bail order of the competent court; that the name of petitioner's father, namely, Fayaz Ahmad Khan, was also in FIR, however, police did not arrest him and dropped him from array of accused. Likewise the name of petitioner could also be dropped even when the petitioner has been once arrested and then released on bail, however, police is not exercising those powers which are vested in police under law, as such, respondent police needs to be directed to carry on a fair investigation and drop the name of petitioner from the array of accused; that the respondent-police abused and misused their powers as the police directly lodged FIR against the petitioner without going into facts of the matter and without

verifying the involvement of petitioner, which clearly indicates that respondent-police maliciously, illegally, and unlawfully implicated petitioner in the impugned FIR, which is manifestly attended with *malafides* on the part of Investigating Officer of the case in league with complainant; that in case FIR to the extent of petitioner is not quashed and the investigation is allowed to continue, the same would amount to the abuse and misuse of the powers infringing the fundamental and legal rights of petitioner, particularly right to liberty and right to life guaranteed under Article 21 of the Constitution of India.

3. Heard learned counsel for the parties and perused the material on file.

4. FIR in question has been registered on the complaint made by one Ms. Saiqa Shafeeq D/o Shafeeq Ahmad Afridi R/o Manzhaar Hyhama, complainant/private respondent on 02.07.2022. During the course of investigation, statement of witnesses as also the statement of victim was recorded. In the investigation, the offences punishable under Section 354-C of IPC and 66 of IT Act, were established against the petitioner and his associates.

5. Perusal of FIR in question, Case Diary and material on record, *prima facie*, discloses the commission of offence punishable under Section 354-C of IPC and 66 of IT Act, against the petitioner and other accused. The Court can exercise powers under Section 482 Cr.P.C, in a case where registration of FIR amounts to abuse of process of law. However, in the instant case, the allegation discloses the commission of cognizableoffence, therefore, the police are required to register the FIR and proceed with the investigation of the case.

6. It may not be out of place to mention here that the Supreme Court in ***State of Telangana v. Habib Abdullah Jeelani, reported in 2017 (2) SCC 779***, has held that the powers under Section 482 Cr.P.C. or under Article 226 of the Constitution of India, to quash the FIR, is to be exercised in a very sparing manner as is not to be used to choke or smother the prosecution that is legitimate. Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. Such power has to be exercised sparingly, with circumspection and in the rarest of rare cases. Inherent powers in a

matter of quashing FIR have to be exercised sparingly and with caution and only when such exercise is justifying by the test specifically laid down in provision itself. Power under Section 482 Cr.P.C., is a very wide, but conferment of wide power requires the Court to be more conscious. It casts an onerous and more diligent duty on the Court.

7. The Supreme Court in the case of State of Haryana and others v. ***Bhajan Lal and others, AIR 1992 SC 604***, has elaborately considered scope and ambit of Section 482 Cr.P.C. and Article 226 of the Constitution of India in the background of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements, the Supreme Court enumerated certain categories of cases by way of illustration, where the power under Section 482 Cr. P.C. can be exercised to prevent abuse of the process of the Court or secure ends of justice. Paragraph 102, which enumerates seven categories of cases where power can be exercised under Section 482 Cr. P.C. 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.
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> (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.
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> (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.
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> (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.
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> (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."

8. In another case of***StateofAndhra Pradesh v. Golconda Linga Swamy, (2004) 6 SCC 522***, the Supreme Court, while dealing with inherent powers of the High Court under Section 482 Cr. P.C., has observed and held as under:

"5. Exercise of power under Section 482of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the Section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquidaliqueconcedit, conceditur et id sine quo res ipsaesse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the Section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercises of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would

otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

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7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal (1992 Supp (1) SCC 335)*……

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8 As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See :*The Janata Dal etc. v. H.S. Chowdhary and others, etc. (AIR 1993 SC 892), Dr. Raghubir Saran v. State of Bihar and another (AIR 1964 SC 1)*). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint/F.I.R. has to be read as a whole. If it appears that on

> consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the F.I.R. that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/F.I.R. is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding."

9. The above settled position of law has also been reiterated by the Supreme Court in ***Priti Saraf and another v. State of NCT of Delhi and another,2021 SCCOnlineSC206***, andit has beensaidthatinherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize a complaint/FIR/charge-sheet in deciding whether the case is the rarestof rare cases,to scuttle the prosecution at its inception. It is settled that whether the allegations in the complaint were true, is to be decided on the basis of evidence during the trial. In the matter of exercise of inherent power by the High Court, the onlyrequirementis to see whether continuance of the proceedings would be a total abuse of the process of the Court.

10. In the above backdrop it may be appropriate to mention here that Section 482 of the Code of Criminal Procedure, preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognizes and preserves powers whichinhere in the High Court. The High Court, while forming an opinion whether a criminal proceeding orcomplaint or FIR should be quashed in exercise of its jurisdiction under Section 482 Cr.P.C., must evaluate whether the

ends of justice would justify the exercise of the inherent power. While inherent power of the High Court has a wide ambit and plenitude, it has to be exercised to secure ends of justice or to prevent an abuse of the process of any court.

11. Petition on hand, when looked from all angles, requires and demands meticulous analyzation of facts by this Court as if it is in appeal and acting as an appellate court and to draw its own conclusion vis-à-vis impugned FIR, complaint and proceedings emanating therefrom. This is not the aim and objective of provisions of Section 482 Cr. P.C. more particularly when petition on hand does not unveil any ground muchless cogent or material one, to indicate that the inherent powers are to be exercised to prevent abuse of process of law and to secure ends of justice. In that view of matter, impugned FIR does not call for any interference qua petitioner and as a consequence of which, petition on hand is liable to be dismissed.

12. For the foregoing reasons, I do not find any merit in this petition and the same is, accordingly, **dismissed**.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
24.12.2024
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I attest to the accuracy and
authenticity of this document
Srinagar
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