

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

Reserved on: 13.05.2024
Pronounced on 30.05.2024

CRM(M) No. 513/2022

- 1. Yunius Hussain Age 38 years, S/o Allah Ditta, R/o village Patti, Tehsil Bari Brahamana District Samba.**

Through: Mr. Jagpaul Singh, Advocate

Vs.

- 1. Union Territory of Jammu and Kashmir through Station House Officer (SHO) Police Station Vijaypur District Samba.**
- 2. Ruveena Akhter W/o Mohd Ashfiq R/o Village Patti Tehsil Bari Brahamana District Samba.**

Through: Mr. Bhanu Jasrotia, GA
Mr. Vivek Mattoo, Advocate vice
Mr. Vishal Bharti, Dy. AG.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1. The petitioner has filed the instant petition under Section 482 Cr.P.C for quashing the FIR No. No. 0196 dated 08.12.2021 to the extent of his implication as accused, registered with the Police Station, Vijaypur under Sections 354, 323, 147, 506 IPC, at the instance of respondent No. 2.

2. It is urged by the petitioner that a civil suit titled, "Salim Khan and other vs. Rafiq Ahmed and others" has been filed by the brothers of the petitioner against the respondent No. 2 and her family members for seeking their shares in the joint property, which is pending disposal before the court of learned Munsiff, Samba and with an ulterior motive in order to settle the score with the petitioner, the respondent No. 2 has falsely implicated the petitioner.

3. The respondent No. 1 has filed the status report, stating therein that on 08.12.2021, the complainant/respondent No. 2 came to the Police Station in an injured condition with Seema Bibi and Mohd Ashfiq and submitted an application written in Urdu against Nazir Hussain, Majid Hussain both the sons of Mushtaq Ahamd, Nazarian Bibi w/o Majid Hussain, Suriya Bibi W/o Mushtaq Ahmad, Ajaz Ahamd alias Ajju S/o Majid Hussain and Sonia D/o Majid Hussain residents of Patti, Tehsil Bari Brahmana. In the application, it is stated that the accused persons are the residents of same village having enmity with her. On 08.12.2021 at 7.15 pm, when the complainant went to her cow shed to switch on the light, the accused Majid and Nazir attacked her. Accused Majid Hussain used unparliamentarily language against her and then put his hand in her breast and tore her clothes, whereas the other accused Nazir started beating her. In the meantime, other accused persons, namely Nazarian Bibi W/o Majid Hussain, Suriya Bibi W/o Mushtaq Ahmad, Ajaz Ahmad S/o Majid Hussain and Sonia D/o Majid Hussain also came on spot, and they also started beating her, Seema Bibi and Mohd Ashfiq. On hearing hue and cry, the inhabitants of the mohalla arrived on spot and on seeing them, the accused persons ran away from the spot. The complainant and two of her other relatives were beaten up by the accused with lathis and stones. On

receipt of this application, FIR No. No. 0196 dated 08.12.2021 for commission of offences under Sections 354, 323, 147, 506 IPC was registered, and investigation was entrusted to ASI Shamas-ud-Din.

4. The complainant-Rubeena Akhter, Seema Bibi and Mohd Ashfiq were examined by the doctor at Government Hospital, Vijaypur. The statements of the witnesses were recorded under Section 161 Cr.PC and the statement of the complainant-Rubeena Akhter was recorded under Section 164 Cr. P.C. As per the statements of witnesses recorded under Sections 161 Cr. P.C and Section 164 Cr. P.C, offences under sections 354/323/147/506 IPS were established against all the accused including the petitioner. It is further stated that the petitioner is an employee of Additional Mobile Magistrate, Samba.

5. Despite service, respondent No. 2 did not choose to appear before this Court.

6. Mr. Jagpaul Singh, learned counsel for the petitioner has argued that the name of the petitioner neither figures in the FIR nor in the statement of the complainant recorded under Section 164 Cr. P.C. He has further argued that the petitioner has been falsely implicated in the case only because he is working in the court.

7. Per contra, learned counsel for the respondent No. 1 has argued that during investigation, the offences stand proved against the petitioner also, as such, the present petition deserves to be dismissed.

8. Heard learned counsel for the parties and perused the record including the Case Diary.

9. A perusal of the application, pursuant to which FIR impugned has been registered, reveals that the allegations of assaulting the complainant, Mohd Ashfiq and Seema Bibi have been levelled only on the six accused, namely, Nazir Hussain, Majid Hussain, Nazarian Bibi, Suriya Bibi, Ajaz Ahamd alias Ajju and Sonia and name of the petitioner is nowhere mentioned in the said application. In the statement made by the complainant under section 164 Cr. P.C. before Addl. Munsiff/JMIC, Samba, she has not stated that the petitioner was accompanying other six accused. She has stated that 08.12.2021, in the evening while she had gone to her cow shed, Majid Hussain came on spot, and he caught her from the breast, tore her clothes and molested her. In the meanwhile, Nazir Hussain came on spot with wooden stick in his hand. The family of Majid Hussain, comprising his wife, son, daughter and mother also came there. They all started assaulting her. She suffered injuries. She raised noise and then her husband and mother came on spot and rescued her. Her husband and mother were also assaulted by the accused. They also suffered injuries and when other persons came on spot, the accused ran away. She was taken to hospital. Accused Majid Hussain told her to do whatever she wanted to do, and they were not afraid of the Court because their person, Yuniuss Hussain was working there. The statement of the complainant was recorded on 17.12.2021, whereas the FIR impugned was lodged on 08.12.2021.

10. The husband of the complainant, namely Ashfiq Hussain and Fatima @ Seema Bibi have also not named the petitioner in their statements. It is for the first time that witness, Gulzar Hussain named the petitioner in his statement recorded under Section 161 Cr. P.C. on 27.02.2022.

11. From the aforesaid facts, it is abundantly clear that no allegation has been levelled against the petitioner in the application submitted by respondent No. 2, pursuant to which FIR impugned has been registered and all the three persons, who were present on spot and injured in the incident, namely, complainant-Rubeena Akhter, Mohd Ashfiq and Fatima Begum, have nowhere stated that the petitioner along with other accused, as named in the FIR, have assaulted them. The complainant in her statement recorded under Section 164 Cr. P.C. has clearly stated that Majid Hussain was threatening her to do whatever she wanted to do, and they were not afraid of the court because Yunius Hussain was working there. She has not even attributed any act, overt or covert to the petitioner in her statement.

12. It appears that the petitioner has been arrayed as an accused with ulterior motive as an afterthought and that too after the statement of Gulzar Hussain was recorded after two months of the occurrence and the cause for arraying him as an accused is that he is working in the court. In this context, it will be appropriate to take note of the judgment of the Hon'ble Supreme Court of India in case titled, "**Salib @ Shalu @ Salim vs. State of UP and ors**". **Salib v. State of U.P., 2023 SCC OnLine SC 947** wherein, the Hon'ble Supreme court while quashing the criminal proceedings against the appellant therein held as under:

"10. We take notice of the following facts:-

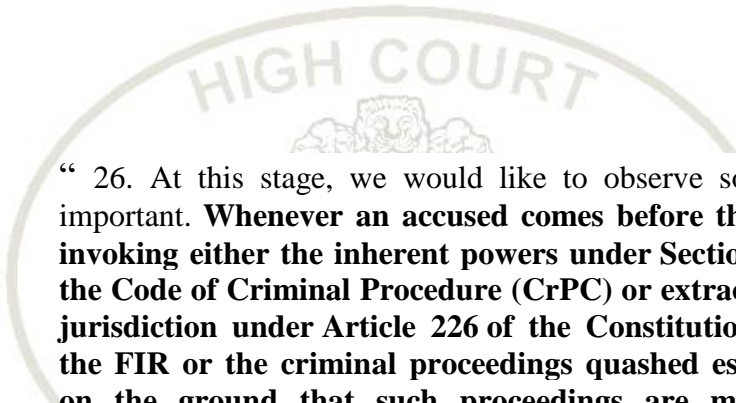
1. **The appellant herein has not been named in the FIR as one of the accused persons. There is no allegation worth the name in the entire FIR against the appellant herein.**
2. **It appears that further statement of the first informant was recorded under Section 161 of the Code of Criminal Procedure and in the said statement, the name of the appellant herein surfaced."**

X XXXX

“14. It appears from the aforesaid that the first informant in her further statement made out altogether a different story than what she narrated in the FIR. **We would not go to the extent of saying that since the name of the appellant herein does not figure in the FIR and it came to be disclosed only for the first time in the further statement of the victim that itself can be a ground to quash the FIR. However, there are many other attending circumstances emerging from the record of the case which indicates that the case on hand is one of false implication. Just because the appellant herein happens to be the son-in-law of a very hardened criminal as alleged by name Iqbal @ Bala, he has also been roped in by way of further statement. It is pertinent to note that the victim in her FIR has not even remotely referred to the presence of Salman s/o Latife at village Mirzapur Paul. We are highlighting all this only to demonstrate, how the entire case was fabricated step by step.**”

(Emphasis added)

13. Further, in the same judgment, Hon'ble Supreme Court has observed as under:



“ 26. At this stage, we would like to observe something important. **Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as**

the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

(emphasis added)

14. The case of the petitioner squarely falls within the guidelines laid down by Apex Court in **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335** for quashing the FIR/criminal proceedings, in which the Apex Court has held as under:

“**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 channelised 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 Section 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.”

(Emphasis added)

15. In view of the above, this Court is of the considered view that the petitioner has been falsely implicated in the impugned FIR after more than two months of the occurrence, more particularly when he was neither named in the FIR, nor the injured persons disclosed his presence in their respective statements, on the place of occurrence. Therefore, the continuance of the investigation in the FIR impugned against the petitioner is nothing but an abuse of process of law.

16. For the foregoing reasons, the petition is allowed and impugned FIR, to the extent of implicating the petitioner subsequently, is quashed.

17. The case diary, as produced, be returned to Mr. Vishal Bharti.

(RAJNESH OSWAL)
JUDGE

Jammu
30.05.2024
Karam Chand/Secy.

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