

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

CRM(M) 120/2024 CrIM(317/2024)

1. Ghulam Mohiudin Lone , Aged 70 years, ...Petitioner(s)
S/O Late Mohammad Munawar Lone
2. Shahida Bano, Aged 35 years,
D/o Ghulam Mohiudin Lone
3. Nazir Ahmad Khan, Aged: 58 years
S/o Ghulam Mohammad Khan
All Residents of : Kawari Laderwan
Tehsil Trehgram of District: Kupwara

Through: Mr. Syed Owais Geelani, Advocate.

Vs.

1. Union Territory of J&K through Station House ...Respondent(s)
Officer (SHO) Police Station Trehgam of District
Kupwara.
2. Incharge police post Awoora of District Kupwara.
3. Ghulam Mohammad Lone.
S/o Late Mohammad Munwar Lone
R/o Kawari Laderwan of District Kupwara.
At present Mustafabad HMT, Srinagar

Through: Ms. Rahella Khan, Assisting Counsel vice
Mr. Satinder Singh Kalla, AAG for R - 1 & 2.
Mr. Pirzada Abid, Advocate &
Mr. Sheikh Amir, Advocate, for R-3.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

08.07.2024

(ORAL)

1. Inherent power enshrined under Section 482 Cr.P.C. is being invoked by the petitioners for quashment of order dated 29.02.2024 (for short impugned order) passed by the court of Sub Judge/JMIC Kupwara (for short the trial court) in case titled as "Ghulam Mohammad Lone Vs. Ghulam Mohi ud Din Lone and Ors" as also FIR No. 10/2024 dated 03.03.2024 registered with Police Station Trehgam for commission of offences under Sections 188, 427 and 447 IPC (for short impugned FIR).

2. Facts giving rise to the filing of instant petition reveal that the private respondent 3 herein filed a civil suit on 17.08.2015 against the defendants-petitioners herein before Sub Judge Kupwara pertaining to an immovable property wherein in the application for interim relief accompanying the said suit, the said court passed an interim order of *status-quo* on 03.09.2015 qua the suit property which order however, subsequently came to be modified on 31.10.2015 after the defendants petitioner herein in the suit appeared and filed written statements as well as objections to the application for interim relief and in terms of said modification order the defendants petitioners herein came to be permitted by the trial court to go ahead with the construction/repair of the house being part of the subject matter of the suit.
3. Aggrieved of the said order dated 31.10.2015, the plaintiff respondent 3 herein filed an appeal before the Court of Principal District Judge, Kupwara which appeal came to be disposed on 07.06.2017 modifying the order dated 31.10.2015 by providing that the defendants petitioners herein can raise construction on the suit land in their possession covered under Survey No. 24 measuring 1 kanal, however, subject to an undertaking to be filed before the trial court to the extent that the said construction shall be raised at his own risk and in case plaintiff succeeds in the suit the defendants shall not claim any compensation thereto and will also remove and demolish any such construction.
4. Subsequent to the passing of the said order dated 07.06.2017 by the appellate Court the plaintiff/respondent herein filed an application before the trial court and sought a direction to the concerned police for lodgment of an FIR against the defendants-petitioners herein for having violated the order passed by the appellate court as also the order passed by the trial court whereunder the trial court had directed the concerned Police Station earlier to implement the order of the appellate court dated 07.06.2017, whereupon the trial court in terms of the impugned order 29.02.2024 directed respondent 2 herein to lodge an FIR against the defendants-petitioners herein for having violated orders passed by the court/s as a consequence whereof, impugned FIR came to be registered against the defendants-petitioners herein.

5. The petitioners herein have challenged the impugned order as also the impugned FIR primarily, *inter alia*, on the grounds that the impugned order as well as the impugned FIR has been passed and got registered against the petitioners herein arising out of a civil matter being contested by the petitioners herein and respondent 3 herein before the civil court pertaining to an immovable property and has been aimed at to convert the said civil dispute into a criminal one on baseless and misrepresented facts and that the impugned order as well as the impugned FIR do not constitute or make out any case against the petitioners so much so the ingredients of alleged offences covered in the impugned FIR do not exist.
6. **Objections** have been filed by the official respondents herein to the petition wherein the petition is being opposed on the premise that upon a complaint filed by the respondent 3 herein along with court order passed by the court of Sub Judge/JMIC, Kupwara, the FIR in question came to be registered against the petitioners and after undertaking investigation therein, the petitioners maintained the instant petition before this Court and the investigation in the FIR in question came to be stayed.
7. Contesting respondent 3 herein has not filed any written response to the petition.

Heard learned counsel for the parties and perused the record.

8. Indisputably the petitioners and respondent 3 herein have been litigating against each other qua the immovable property before the civil court/trial court wherein various interim orders came to be passed from time to time including one passed by the appellate court on 07.06.2017. In the appeal filed by the respondent 3 herein against the order dated 31.10.2015 passed by the trial court in the application for interim relief accompanying the suit filed by the respondent 3 herein against the petitioners herein.
9. Perusal of the record tend to show that the plaintiff respondent 3 herein have had complained disobedience of the order passed by the appellate court dated 07.06.2017 before the trial court and in this regard filed an application on 21.02.2024 seeking a direction in the

name of Police Station concerned for registration of an FIR against the petitioners herein contending in the application specifically that despite the order passed by the trial court in the name of concerned SHO earlier for ensuring compliance of order of the appellate court dated 07.06.2017, the petitioners herein have been violating the said order rendering them liable for prosecution in which application, admittedly the trial court without issuing notice to the non-applicants therein petitioners herein inasmuch as instead of proceeding against them in terms of the provisions of Order 39 Rule 2-A CPC for disobedience and breach of an injunction proceeded to direct respondent 2 straightaway to register the FIR against the petitioners herein, whereupon the respondent 2 registered the impugned FIR.

10. Law is settled that a Court is empowered to take cognizance of the disobedience or breach of an order granted by it and to proceed against the offender for such disobedience or breach under the provisions of Order 39 Rule 2-A CPC. The provisions of Order 39 Rule 2-A are intended to maintain majesty of judicial orders and to preserve rule of law and to ensure faith of litigants in the administration of justice. The nature of proceedings under Order 39 Rule 2-A is quasi criminal and though it has a punitive aspect embodied therein whereunder the offender can be ordered to be detained in the civil prison yet, the person who complains disobedience or breach of order has to clearly make out beyond any doubt that there was an order required to be obeyed by the opposite party and that the said order has been observed in breach or disobeyed.

It is also settled position of law that the provisions of Order 39 Rule 2-A CPC are to be exercised without there being any element of vindictiveness therein as the said provision is curative in nature with a purpose to ensure that order passed by the courts are implemented and disobedience is remedied. Thus, in presence of the said provisions of Order 39 Rule 2-A and the aforesaid principles of law there was no reason or occasion for the trial court while entertaining the application filed by the respondent 3 herein to pass the impugned order dated

29.02.2024 directing the registration of FIR against the petitioners in the matter for violation of order of injunction passed by the appellate court dated 07.06.2017. The said order thus, cannot but be said to have been passed by the trial court without any power and authority.

11. Having held the impugned order to be bad in law the the next question that falls for consideration of this court would be as to whether the impugned FIR having originated from the said order of the trial court would legally sustain and the exercise of inherent power enshrined under Section 482 CrPC is warranted.
12. Insofar as the exercise of inherent power enshrined under Section 482 CrPC is concerned, law is no more res-integra that in exercise of said wholesome power the High Court is well within its power to quash an FIR if it comes to the conclusion that the same is an abuse of process of court or that the ends of justice demand the quashment of the same.

Law is also no more res-integra that saving of the High court's inherent power both in civil and criminal matters is designated to achieve a solitary public purpose, which is that the court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution and in a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the same in the interest of justice as it is a settled law that ends of justice are higher than the ends of mere law though justice has got to be administered according to the laws made by the legislatures.

13. Keeping in mind the aforesaid position of law and coming back to the case in hand as has been noticed in the preceding paras the impugned FIR owes its origin to the impugned order dated 29.02.2024 passed by the trial court having been held to be a legally unsustainable hereinabove and got registered by the respondent 3 herein against the petitioners herein through the intervention of trial court seized of a civil dispute pertaining to an immovable property inter-se the parties where indisputably the respondents 3 herein have had complained disobedience of the injunction order passed by the appellate court on 07.06.2017 and instead of choosing to have the petitioners punished for such alleged disobedience, respondent 3 herein chose to contest

the said proceedings into criminal one through the intervention of the trial court as a weapon of harassment which is not permissible in law succeeding in getting the impugned FIR registered against the petitioners herein which FIR as such is liable to be quashed being outcome of abuse of process of court.

14. Viewed thus, what has been observed considered and analyzed hereinabove the instant petition merits to be allowed. Accordingly the petition is allowed and the impugned order dated 29.02.2024 passed by the court of Sub Judge/JMIC Kupwara as also the impugned FIR No. 10/2024 dated 03.03.2024 registered with Police Station Trehgam are quashed.

Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

08.07.2024

Ishaq

Whether the order is speaking? Yes
Whether approved for reporting? Yes