

Suppl. List VC
Sr. No. 01

IN THE HIGH COURT OF JAMMU AND KASHMIR AT
SRINAGAR

EMG- CRM(M) No. 18-A/2020
EMG CrLM No. 5-A/2020

Gowhar Nazir Shah Geelani

... Petitioner(s)

Through: - Mr. Salih Pirzada, Advocate
(On video conference from his
residence at Srinagar)

V/s

Union Territory of JK and Ors.

....Respondents(s)

Through: - Mr. B. A. Dar, Sr. AAG
Ph. No. 9906544708 (on voice
call from his home)

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

ORDER
24.04.2020

While Mr. Salih Pirzada, learned counsel appearing for the petitioner has been provided the link and is on VidyDesktop; Mr. B. A. Dar, learned Sr. AAG, representing the Union Territory, respondents is on Voice Call from his residence.

This petition is filed by one Gowhar Nazir Shah Geelani S/o Nazir Ahmad Shah Geelani R/o Nowshahara, Srinagar, seeking quashment of FIR No. 11/2020, registered at Cyber Police Station, Kashmir Zone on the grounds detailed out in the petition with particular reference that the Cyber Police Station, Kashmir Zone has no jurisdiction to register and investigate the case relating to offences falling under the provisions of the Unlawful

Activities (Prevention) Act, 1967 and Indian Penal Code, as the concerned Police Station has been declared as Police Station for the purpose of registration and investigation of the case(s) regarding the offences falling under provisions of Information Technology, Act, 2000 and other allied offences in respect of the area specified in the corresponding entries in Column (2) thereof with reference to notification issued in terms of SRO 559 of 2019 by the Home Department of the Government of Jammu and Kashmir.

Mr. Salih Pirzada, learned appearing counsel for the petitioner while strengthening his claim for the relief prayed for in the petition, seeking quashment of FIR No. 11/2020, has further elaborated his claim by submitting that the Cyber Police Station has no jurisdiction to register and investigate the offence made in the FIR, as same is beyond the powers as vested in terms of Section 78 of the Information Technology Act, 2000.

Learned counsel appearing for petitioner submits that the paragraph 12 of the FIR furnishes details regarding the alleged commission of offence by the petitioner, which does not disclose the cognizable offence, which is the basis for registration of case by a Police Officer in terms of Section 154 of Criminal Procedure Code. He further submits that the duty of the officer Incharge of Police Station for registration of FIR has to be satisfied regarding the information disclosing the cognizable offence is subject to two conditions; (1) the Police Officer should have reason to suspect the commission of a cognizable offence (2) he should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation. Learned counsel further submits that the information forming basis for registration of FIR for commission of offence under the provisions of Unlawful Activities (Prevention) Act, 1967, does not meet the

requirement of the definitions made in Section 3 of the Act of 1967. The further ground raised in the petition is that the action of the Police is having basis on malice in law, as there is no material, which forms the basis for registration of case against a Journalist, who only performs his professional duties, as guaranteed under Article 19(1) (a) of the Constitution of India.

Learned counsel appearing for the petitioner submits that the ground of jurisdiction of the Cyber Police Station to register and investigate the case outside the scope of Information Technology Act, 2000 has already been the subject matter of the decision by Kerala High Court in case titled Rajesh Vs. State of Kerala and the said Court while quashing the FIR has held that the Cyber Police Station has no power to investigate the offence beyond the one arising out of the provisions of Information Technology Act, 2000.

The further ground raised by Mr. Salih Pirzada, learned appearing counsel for the petitioner is that the FIR does not disclose the commission of offence under Sections 505 of IPC and Section 13 of Unlawful Activities (Preventions) Act, 1967 and while strengthening his claim he has referred to and relied upon the Judgments reported in AIR 1950 SC 124 titled Ramesh Thapar Vs. UOI and AIR 1973 SC 106 titled Bentcolman Vs. Union of India and 2005 SCC 423, AIR 1992 SC 604, State of Haryana Vs. Bajan Lal

Mr. B. A. Dar, learned Sr. AAG submits that the petitioner and his counsel have not complied with the requirement of Standing Operation Procedure (SOP) in vogue while dealing with urgent matters during lockdown period arising out of spread of Coronavirus, as no copy of petition has been furnished to him by e-mail in advance and no consent sought for listing of the matter.

Mr. B. A. Dar, learned Sr. AAG submits that on the threshold of the investigation, Court has no power to interfere in the matter, as the same is

beyond the scope of powers of the Court exercised in terms of Section 482 of Criminal Procedure Code. He further submits that all the grounds of challenge are vague and without any merit. He further submits that merits of the case cannot be discussed or raised while questioning the FIR. Learned counsel submits that on registration of the case, the Cyber Police Station, Kashmir Zone, has forwarded the matter to the Supervisory authority of Police and the Inspector General of Police, Kashmir, transferred the case to Police Station, Sadder, for investigation in terms of order dated 22.04.2020, therefore, the jurisdiction aspect of the matter is not available to the petitioner to seek quashment of FIR, which otherwise also, cannot be a ground for quashment of FIR.

Mr. B. A. Dar, learned Sr. AAG submits that the Hon'ble Apex Court in catena of Judgments has discussed the scope of Section 482 Cr. PC and has laid down the following tests:-

“ a. Where the allegations made in the first information report or the complaint even if 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.

b. 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.

c. 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.

d. 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 Magistrate as contemplated under Section 155(2) of the Code.

e. 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.

f. 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:

g. Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings 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.”

Applying the tests laid down Mr. Dar, learned Sr. AAG submits that it can be safely said that the entire matter is at its infancy stage and does not fall within the four corners of the tests laid down.

Apex Court also held that power is to be exercised cautiously, carefully and sparingly and Court has not to function as a Court of appeal or revision. It has also laid down the parameters and guidelines in cases titled as ***“K.L.E Society & ors v. Siddalingesh reported in 2008 AIR SCW 1993; A.P Vs Bojjoori Kanthaiah reported as 2008 AIR SCW 7860 and Reshma Bano Vs State of Uttar Pradesh reported in 2008 AIR SCW 1998”***.

Mr. B. A. Dar, learned Sr. AAG submits that in view of non-availability of petition, he could not meet all the grounds raised in the petition, therefore, seeks direction on Registry to furnish copy of the petition.

Heard learned counsel for the parties.

Notice in main petition as well as in Crlm, waived by Mr. B. A. Dar, learned Sr. AAG on behalf of respondents. Registry to supply copy of petition by PDF file to Mr. B. A. Dar, learned Sr. AAG.

Status report/response be filed by or before the next date of hearing.

List on 20.05.2020.

Registry to convey the order to learned counsel for the parties by e-mail.

SD/-
(Ali Mohammad Magrey)
Judge

Srinagar
24.04.2020
Mohammad Yasin Dar