

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

Reserved on: 13.05.2022

Pronounced on: 18.05.2022

CRM(M) No.233/2021

CrIM No.863/2021

MOHAMMAD SHAHNAWAZ KHAN

...PETITIONER(S)

Through: Mr. Shuja-ul-Haq, Advocate.

Vs.

UT OF J&K & ORS.

....RESPONDENT(S)

Through: Mr. Irfan Andleeb, Dy. AG.

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

ORDER(ORAL)

13.05.2022

1) The petitioner has challenged FIR No.20/2021 for offences under Section 4-A of J&K Prevention of Corruption Act and Section 120-B RPC registered with Police Station, Anti Corruption Bureau, Srinagar.

2) As per the impugned FIR, one Bisma Nawaz lodged a report alleging therein that the then SHO, Police Station, Soura demanded illegal gratification through ASI Mohammad Ashraf from her and her father as a motive or reward for registering FIR pursuant to order dated 10.11.2018 passed by Chief Judicial Magistrate, Srinagar, whereby the SHO was directed to proceed under Section 156(3) of the Cr. P. C in the light of the complaint filed by the complainant before the Chief Judicial Magistrate.

3) It appears that the complainant Bisma Nawaz had presented a complaint before the Chief Judicial Magistrate, Srinagar, alleging therein that one Parvaiz Ahmad Sheikh had subjected her to sexual abuse. When the complainant approached the SHO, P/S Soura, for registration of FIR, he showed reluctance and demanded illegal gratification. It was further alleged in the complaint that when the complainant failed to meet the demand of the SHO, she approached the Chief Judicial Magistrate, Srinagar, with an application for directing the SHO to register a case under Section 156(3) of the Cr. P. C. On 08.08.2018, the Chief Judicial Magistrate, Srinagar, directed the SHO to register an FIR on the basis of the allegations made by the complainant against one Parvaiz Ahmad Sheikh, but instead of registering the FIR, the SHO demanded illegal gratification from the complainant and her father for doing lawful duty of lodging the FIR. On the basis of these allegations, the impugned FIR came to be lodged after conducting the preliminary enquiry.

4) It has been contended by the petitioner that the complaint lodged by the complainant, Bisma Nawaz, and her father is false and frivolous. It is further contended that the preliminary enquiry conducted by the Anti Corruption Bureau into the allegations made by the complainant was closed as not proved, even though the said enquiry continued for about two years. The petitioner has placed on record communication dated 20.02.2020 to substantiate this fact. It is further contended that despite closure of preliminary enquiry against the petitioner, the respondents have registered the impugned FIR which is an afterthought.

It is also contended that the registration of the impugned FIR is ex-facie an abuse of process of law and that no offence is made out against the petitioner.

5) The respondents have resisted the petition by filing a reply thereto. In the reply, the facts of the case have been reiterated by the respondents. It has been submitted that the matter was examined by the government and it was found that the offence under Section 4-A of the J&K Prevention of Corruption Act is made out against the petitioner. Accordingly, the impugned FIR came to be registered.

6) I have heard learned counsel for the parties and perused the material on record including the Case Diary.

7) It appears that during the investigation of the case, the investigating agency has recorded the statements of the complainant, Bisma Nawaz, and her father Shahnawaz Ahmad Sofi, besides recording statements of other witnesses. The complainant, Bisma Nawaz, has stated that in the year 2017 she was kidnapped by a person, namely, Parvaiz Ahmad Sheikh, and in this regard she moved an application before Police Station, Soura, but no action was taken on the said application whereafter she approached the Court and a direction was issued to the SHO to register the FIR. She has further stated that in spite of this, the FIR was not registered and her father suspected that SHO is not taking any action in order to extract illegal gratification from them. She has stated that she accompanied her father a number of times to

police station but in her presence neither the SHO nor any other official of the police station demanded illegal gratification from them. Even after being subjected to questioning by the investigating agency, the complainant reiterated and re-affirmed that neither petitioner/accused Mohammad Shahnawaz Khan nor ASI Mohammad Ashraf demanded any illegal gratification from them and she went on to state that the demand of illegal gratification was not made through any other official of the police station.

8) The father of the complainant, Shahnawaz Ahmad, in his statement recorded during investigation of the case has stated that on 25.11.2017, his daughter Bisma Nawaz, had gone to the College but she did not come back. He lodged a report with Police Station, Soura. It was found that his daughter had been kidnapped by one Parvaiz Ahmad Sheikh. Accordingly, they lodged a report with Police Station, Soura, but the FIR was not registered, whereafter they approached the Court. A direction was issued to the SHO to register the FIR but in spite of this, the FIR was not registered and he was made to approach the police station a number of times. On account of the inaction of the SHO, he felt that the SHO is trying to extract illegal gratification from him. He approached the SHO a number of times but the SHO never demanded any bribe from him.

9) From the statements of the complainant and her father recorded during the investigation of the case, it is clear that the allegation in the impugned FIR to the effect that the petitioner or any other official of the

police station on his behalf has demanded illegal gratification from the complainant or her father is not substantiated. The complainant and her father have stated that because of the attitude of the petitioner, they felt that perhaps petitioner is trying to extract illegal gratification from them though they have clearly stated in their statements that neither the petitioner nor any person on his behalf ever demanded any illegal gratification from them. Thus, ingredients of offence under Section 4-A of the J&K PC Act are not made out from the statements of these two important witnesses recorded during the investigation of the case.

10) It is a settled law that if allegations made in the FIR are not substantiated by the material assembled by the investigating agency during investigation of the case, the continuance of investigation/prosecution in such matters amounts to abuse of process of law. Thus, this is a fit case where this Court should exercise its power under Section 482 of the Cr. P. C to quash the proceedings in the impugned FIR.

11) Accordingly, the petition is allowed and the impugned FIR and the proceedings emanating there from are quashed.

12) The case diary be returned to learned counsel for the respondents

(Sanjay Dhar)
Judge

Srinagar,
18.05.2022
“Bhat Altaf, PS”

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No