

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT
SRINAGAR

Reserved on: 18.08.2022
Pronounced on: 24.08.2022

CRMC No.100/2016

MST. HAMEEDA

... PETITIONER(S)

Through: - Mr. M. Ashraf Wani, Advocate.

Vs.

STATE OF J&K & ANR.

...RESPONDENT(S)

Through: - Mr. Faheem Nisar Shah, GA.

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

JUDGMENT

1) The petitioner has challenged the charge sheet arising out of FIR No. 198 of 2015 for offences under Section 447-A and 353 RPC filed against her before the court of learned Chief Judicial Magistrate Budgam.

2) It appears that an FIR bearing No.198 of 2015 came to be lodged with Police Station, Budgam, alleging therein that an information was received from the police personnel deployed for the security of officers residing at Budgam that one lady, after breaking the security cordon and using abusive language against the officials, entered the residence of an officer. On the basis of this information, aforesaid FIR for offences under Section 447-A of RPC came to be registered and investigation was set into motion. After investigation of the case, it was found that on

26.07.2015, while the police officials were on duty near the residence of officers of district Budgam, the petitioner, who claimed herself to be the wife of SSP, Budgam, crossed the security barrier, trespassed into the residence of the SSP and also hurled abuses in the name of the SSP. It was also found that the petitioner had prevented the security personnel deployed over there from performing their official duties. Thus, offences under Section 447-A and 353 of RPC were found established against the petitioner and the challan was laid before the court.

3) The petitioner has challenged the impugned challan on the grounds that she had entered into wedlock with respondent No.2, the then SSP, Budgam, on 14.06.2001 but during the subsistence of said marriage, respondent No.2 contracted second marriage without seeking her consent and without obtaining any permission from the competent authority. It is further alleged that respondent No.2 prepared a forged divorce deed that was challenged by the petitioner by way of a civil suit before the court of Civil Judge Junior Division (Sub Registrar), Srinagar, and vide judgment dated 28.12.2014, the divorce deed dated 19.09.2005 was declared as null and void. It has been further averred that the petitioner, after obtaining the decree from the Civil Court, approached the court of 1st Additional Munsiff, Srinagar, by filing a suit for declaration and permanent injunction and vide order dated 24.07.2015 passed by the said Court, defendants in the suit including respondent No.2 herein were restrained from interfering in petitioner's peaceful possession and enjoyment of residences of respondent No.2 at Srinagar and Budgam. It is contended that the FIR has been lodged against the

petitioner as an act of vengeance on the part of respondent No.2, who is a high ranking police official and that the same does not disclose commission of any offence against the petitioner.

4) The official respondent has filed its reply to the petition in which the allegations made in the impugned challan have been reiterated. The respondent has not made any comments as regards the relationship of the petitioner with respondent No.2. However, the allegations of vengeance or ill will have been denied by the official respondent. It has been claimed that the material on record clearly discloses commission of offences under Section 447-A and 353 of RPC against the petitioner and, as such, the petition deserves to be dismissed. Respondent No.2 has not filed any reply to the petition.

5) Heard learned counsel for parties and perused the material on record.

6) As already noted, the main contention urged by the petitioner for impugning the challan is that the same has been filed against her at the instance of respondent No.2, who is a high ranking police officer, just to wreak vengeance upon her so as to defeat the decree and the judgment passed by the Civil Court in her favour. In this regard the petitioner has relied upon the judgment and decree dated 28.12.2014 passed by Civil Judge Junior Division (Sub Registrar), Srinagar, whereby the divorce pronounced by respondent No.2 upon the petitioner has been declared as null and void. The petitioner has also relied upon order dated 24.07.2015 passed by learned 1st Additional Munsiff, Srinagar, in a suit filed by her

petitioner seeking declaration and permanent injunction. Vide the said order, respondent No.2 has been restrained from interfering in petitioner's possession, occupation and enjoyment of residences of respondent No.2 at Srinagar and Budgam.

7) According to learned counsel for respondents, the documents cannot be looked into in these proceedings and it is only during the trial of the case that the petitioner can confront the prosecution witnesses with these documents or the said documents can be produced in defence evidence. Learned counsel has submitted that these proceedings cannot be converted into a mini trial and the material produced by the petitioner cannot be looked into. In this regard he has relied upon the judgment of the Supreme Court in the cases of **Rajeev Kourav vs. Baisahab and Ors.** (Criminal Appeal No.232 of 2020 arising out of SLP(Crl) No.1174 of 2017) decided on February 11, 2020) and **Priti Saraf & anr vs. State of NCT of Delhi & anr.**(Criminal Appeal No.296 of 2021 arising out of SLP(Crl) No.6364 of 2019 decided on March 10, 2021).

8) Normally in the proceedings under Section 482 Cr. P. C the documents which are not part of the challan cannot be looked into but then it is a settled law that the documents which are undisputed or the documents which are of sterling quality and whose authenticity is not in dispute can certainly be looked into by the High Court while exercising jurisdiction under Section 482 of the Cr.P.C. In this regard I am fortified by the judgment of the Supreme Court in the case of **Rajiv Thapar and others vs. Madan Lal Kapoor**, (2013) 3 SCC 330. Paras 29 and 30 of the

said judgment are relevant to the context and the same are reproduced as under:

29. *The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.*

30. *Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-*

30.1. *Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?*

30.2. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

9) The aforequoted ratio laid down by the Supreme Court was relied upon by the Supreme Court in its later judgment in the case of **Prashant Bharti vs. State (NCT of Delhi) (2013) 9 SCC 293**.

10) Let us now analyse the material on record in the light of the principles laid down by the Supreme Court in **Rajiv Thapar's** case. The documents that have been placed on record by the petitioner in these proceedings are certified copy of the judgment and decree dated 28.12.2014 passed by Civil Judge Junior Division (Sub Registrar), Srinagar, and certified true copy of order dated 24.07.2015 passed by learned 1st Additional Munsiff, Srinagar. The authenticity of both these documents, which are public documents, cannot be disputed and, in fact, the official respondent in its reply has not disputed the authenticity of

these documents whereas respondent No.2 has not come forward to file any counter to the petition. Therefore, this Court would be well within its jurisdiction to take into consideration these documents while deciding the merits of this petition, as the same are of sterling and impeccable quality.

11) So far as the relationship between the petitioner and respondent No.2 is concerned, although respondent No.1 has not commented upon the same in its reply, yet the same is an admitted fact. Even in the statements of witnesses recorded under Section 161 of the Cr.P.C during the investigation of the case, it has been clearly indicated that the petitioner was claiming herself to be the wife of the SSP i.e., respondent No.2 herein. No material has been brought on record to dispute this fact. Thus, it can safely be stated that the petitioner happens to be the wife of respondent No.2. The divorce pronounced by respondent No. 2 upon the petitioner has been declared as null and void in terms of judgment and decree dated 28.12.2014 passed by Civil Judge Junior Division (Sub Registrar), Srinagar, which means that the marriage between the petitioner and respondent No.2 was subsisting at the relevant time.

12) Once it is shown from the documents placed on record by the petitioner that her marriage with respondent No.2 was subsisting at the relevant time, the question that falls for determination is whether a wife can be prosecuted for offence of criminal trespass for entering upon the premises of her husband. If answer to this question is in negative, then the charge of criminal trespass laid against the petitioner fails.

13) Section 441 of RPC defines the offence of criminal trespass in the following manner:

441. Criminal trespass. — Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit “criminal trespass”.

From a perusal of the aforesaid provision, it is clear that it is only if a person enters upon the property in possession of another person with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, that the offence of criminal trespass can be said to have been constituted.

14) In the instant case the petitioner has, as per the facts established after investigation of the case, entered into the residence of her husband, respondent No.2, despite having been asked by the security personnel not to do so. As per the documents placed on record by the petitioner, her right to reside there is protected by order dated 24.07.2015 passed by the civil court, according to which respondent No.2 has been directed not to interfere in her enjoyment of the said premises. In the opinion of this Court, the entry of the petitioner into the house of her husband under the shield and cover of order dated 24.07.2015 does not constitute an offence of criminal trespass. Her entry in the house of her husband is certainly lawful which is backed by the sanction of order of the civil court. Therefore, even if we take the allegations made in the challan as

correct at their face value, the documents produced on record by the petitioner tend to show that the offence of criminal trespass is not made out against her.

15) That takes us to the charge for offence under Section 353 of the RPC which is alleged to have been committed by the petitioner in the instant case. As already noted, the petitioner under the colour of order of the civil court was well within her rights to reside in the house of respondent No.2. It can never be the duty of a public official to prevent a person from exercising his/her right which is sanctioned by law. There may be marital a discord going on between the petitioner and respondent No.2 but the security personnel deployed at the residence of respondent No.2 are not duty bound to interfere in that marital discord and prevent the wife of respondent No.2 from entering into the house of the her husband. Therefore, the act of security personnel in preventing the petitioner from entering the house of her husband does not come within the purview of their lawful duties. In view of the fact that the documents produced by the petitioner tend to show that she is legally wedded wife of respondent No.2, the charge for offence under Section 353 of the RPC is also not made out against the petitioner

16) What comes to the fore from the analysis of the material on record is that respondent No.2, who is a high ranking police official, appears to have used his official position to wreak vengeance upon the petitioner, with whom he has a long standing marital discord, by involving her in a criminal case after having failed to get any favourable result in the civil

litigation against his wife. Thus, this is a clear case where criminal proceedings have been initiated against the petitioner which are attended with malafides and ulterior motives for wreaking vengeance upon the petitioner and with a view a to spite her due to private and personal grudge. The instant case is, therefore, squarely covered by illustration (g) laid down by the Supreme Court in the case of **State of Haryana vs. Bhajan Lal**, AIR 1992 SC 6048. Thus, the proceedings deserve to be quashed.

17) For the foregoing reasons, the instant petition is allowed and the impugned challan and the proceedings emanating therefrom are quashed.

18) A copy of this order be sent to the learned trial court for information.



Srinagar,
24.08.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No