

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

Reserved on : 27.07.2021
Pronounced on: 23.08.2021

CRMC No. 289/2018
IA Nos. 1/2018 & 2/2018

Asif Iqbal Naik

.....Appellant/Petitioner(s)

Through :- Mr. F. S. Butt, Advocate

v/s

State of J&K and others

.....Respondent(s)

Through :- Mr. Suneel Malhotra, GA

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

JUDGMENT

1. The instant petition has been filed by the petitioner under section 561-A Cr.P.C (Now 482 Cr.P.C) for quashing the FIR bearing No. 117/2018 dated 12.05.2018 registered by Police Station, Kishtwar for commission of offences under sections 500, 504 & 505 RPC.

2. It is stated in the petition that the petitioner is a reputed journalist and associated with Early Times Newspaper, Jammu and Kashmir, as also with Times Now English News Channel and has broken down various stories of national importance. It is further stated that the petitioner had published a story in the Newspaper "Early Times" in its edition of 19th April, 2018 and in the said report the petitioner has also given reference to the YouTube channel and also invited the subscribers to watch video on Early Times, YouTube channel, Jammu. The story published by the petitioner bears the heading, "Father of 5 brutally tortured by Kishtwar Police" and the said news item reads as under:

“Jammu, April 18, a 26 year-old Kishtwar man, the father of five children, was Tuesday shifted in a critical condition to Government Medical College Jammu after he was allegedly subjected to third degree torture by Kishtwar police. Akhter Hussain Hajam son of Ali Mohammad Hajam of Keshwan in Kishtwar was tortured during illegal confinement in connection with the of disappearance of Tariq Hussain who is missing for last five week.

Speaking to early times, the kin of Akhter said he was kept in illegal detention by the police initially for 27 days after they picked him on March 18. He was again detained a couple of days ago. The family members alleged that during the earlier detention, Akhter was subjected to brutal torture in side police station Kishtwar.

They said that after releasing him on surety bonds, the police laid the condition that he will have to appear at Police Station Kistwar daily, but was again kept in illegal confinement and tortured as a result of which he was in critical condition.

The doctors told us that he had received head injuries. His condition is serious and the chances of his survival are bleak, said” said Irshad Ahmad, cousin of Akhter.

He said Akhter’s wife Tahira Begum and her one month-old-child was also under police detention on Tuesday. The woman and her child were later handed over to local Sarpanch by the Station House Officer. “They called us to police station. When we reached there, Akhter was being shifted to District hospital in a critical condition, “said Irshad, adding that after doctors termed him critical police boarded him in ambulance for Jammu and forced the family members to accompany him which they refused. Irshad said that after this incident the police tried to detain them so that they could not narrate anything to the local people. But somehow they managed to escape from the police station. He said that they are poor and are working as labourers and have no money for Akhter’s treatment. “They told us to accompany him. How can we when we don’t have any money? Since last one month the family is shuttling between home and police station, said Irshad.

He said Akhter was engaged as labourer by Tariq Hussain at his home for some construction work. A day before Tariq went missing, Akhter had called him demanding money for his work. He said Akhter again

joined the construction work at Tariq's residence where he came to know about Tariq's disappearance.

Irshad said that Police brutalities was visible on Akhter's body. Akhter's brother Abdul Gani Hajam blamed S.P. Kishtwar, Deputy SP HQ Kishtwar and SHO Police Station Kishtwar for torturing his brother. He said that it is only police who tortured him inside police station Kishtwar and now the police is trying to prepare a concocted story wherein they tried to give the impression that Akhter had made suicide bid inside police station Kishtwar. Meanwhile, MLA Inderwal, Ghulam Mohammad Saroori visited the GMC Jammu and condemned the allege torture of Akhter Hussain and called for a probe into the incident."

3. It is further submitted that brother of said Akhter Hussain, Abdul Ganie S/o Ali Mohammad Hajam has filed a criminal complaint against respondent Nos. 3, 4 & 5 and Anr under sections 330, 331, 342, 348 RPC and the same was instituted on 19.04.2018 itself, in which the similar contents were mentioned, those were got published in the newspaper mentioned above. It is further stated that the respondents got furious due to the reporting by the petitioner, as such, respondent No. 3 approached the respondent No. 2 for seeking permission for registration of a complaint against the petitioner under section 505 RPC. The Deputy Commissioner concerned without conducting any preliminary enquiry authorized respondent No. 3 to register FIR and accordingly, FIR bearing No. 117/2018 dated 12.05.2018 under sections 500, 504 and 505 RPC was registered by the Kishtwar Police. It is further submitted that the petitioner was doing his professional duties and he only reported to the extent that was witnessed by him during the statements given by the kin of Akhter Hussain that was corroborated by the criminal complaint lodged against respondent Nos. 3 to 5 by the real brother of Akhter Hussain.

4. The petitioner has impugned the FIR on the ground that the said FIR has been lodged to harass the petitioner so as to stop him from publishing any news item against the Police establishment and to gag the press and electronic media, which amounts to infringement of right of free speech and expression as guaranteed under the Article 19 of the Constitution of India. It is further stated that the FIR is nothing but an abuse of process of law and allegations in the FIR impugned are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there are sufficient grounds for proceeding against the petitioner.

5. Response stands filed by the respondents, in which it has been stated that news paper cutting of Early Times of Edition dated 19.04.2018 was forwarded to SHO Police Station, Kishtwar for verification, who submitted that on 17.03.2018, one Muneer Ahmed S/o Bahar Ahmed Naik R/o Sarawan accompanied by Lumberdar Qasim Din S/o Lal Din R/o Sarawan produced a written complaint at Police Post Bhatna Nagar, stating therein that, on 13.03.2018 at around 1600 hrs., one Tariq Hussain S/o late Ghulam Rasool Naik R/o Sarawan after informing his wife Mursa Begum left towards Pakalan. At about 2000 hrs. said Tariq Hussain informed his wife through mobile phone that he will return home in the morning. After that his mobile remained switched off. Search was made in Sarwan Keshwan and adjoining areas and it came to be known that said Tariq Hussain had not reached to Pakalan. Despite hectic search, his whereabouts could not be ascertained. On this report, a missing report was registered vide DDR No. 12 dated 17.03.2018 at Police Post, Bhatna Nagar Thakrie and search was started. Enquiry was made from the family members of the missing person. Vide DPO Kishtwar order endstt.

No. CRB/SIT/18/3949-60 dated 31.03.2018 a Special Investigation Team (SIT) headed by Sh. Manoj Kumar-JKPS Dy. S.P DAR DPL Kishtwar was constituted in order to trace out the missing person. During the enquiry the SIT enquired from the family members of the missing person and suspects of Takrie area to ascertain whereabouts of the missing person. The CDRs/SDR of Mobile numbers 9906197802, 8492883352, 94696660423 belonging to said Tariq Hussain were obtained by SIT and found that on 12.03.2018 evening frequent calls were made by the said Tariq Hussain on 8492806087 and 8492036587 numbers belonging to one Akhter Hussain S/o Ali Mohammad Hajam R/o Banthana Keshawan. The last calls were also found to be made on these mobile numbers. During enquiry, beside other suspects of the Thakrie area said Akhter Hussain and his wife Tahira Begum were called by the SIT for enquiry in Police Station, Kishtwar on 18.04.2018. During enquiry, said Akhter Hussain expressed ignorance with regard to the missing of Tariq Hussain, however, he deposed that prior to the missing of Tariq Hussain, he used to contact him over his mobile phone in connection with construction work. During the enquiries, Akhter Hussain requested to visit toilet for easing himself. He was accordingly, allowed. After some time, some officials of Police Station too visited the toilet complex and found it bolted from inside by Akhter Hussain. The official knocked the door for some time and when got no response, he got suspicious and accordingly raised alarm upon which the door of the toilet complex was broken open by other officials. On opening the door, it was found that Akhter Hussain had attempted to hang himself by tying his belt around his neck with the other end tied to handle of the door. The police officials immediately shifted him to hospital where doctors treated him and

later referred him to Jammu for advanced brain scanning in view of any suspected damage to any brain due to hanging attempt. In this connection a case FIR No. 95/2018 U/S 309 RPC was registered at P/S Kishtwar against said Akhter Hussain and investigation of the case was entrusted to SI Achal Rana of Police Station, Kishtwar. On 19.04.2018, Asif Iqbal Naik a news reporter of English daily "Early Times" generated and published news in the Early Times newspaper captioned "Father of five brutally tortured by Kishtwar Police" and circulated the same news in different social medial groups and thereafter some other news papers too published the same news on 24.04.2018. By doing so the said Asif Iqbal Naik tried to instigate the people of Kishtwar against the Kishtwar Police and thus created rage/confusion among the public of Kishtwar. Through the publication of that news report the said reporter tried to instigate the people to the extent to commit offence of any type including road blockade, vandalism, breakage of public property etc. in Kishtwar town. Keeping in view the sensitivity of the issue and seriousness of allegations leveled in news report DPO Kishtwar vide letter No. CRB/18/4007-08 dated 19.04.2018 sought a report from Medical Superintendent GMC hospital, Jammu regarding the physical state and health of Akhter Hussain S/o Ali Mohd. Hajam R/o Banthna Kehswan. As per the report received from Medical Superintendent GMC hospital Jammu "No mark of injury or torture was found on the body of Akhter Hussain. However, mark of G/L up going planters ligature was found on his neck. After the discharge of Akhter Hussain from hospital, he was arrested in case FIR No. 95/2018 U/S 309 RPC of Police Station, Kishtwar and the challan was produced against him in the Court of Chief Judicial Magistrate, Kishtwar vide challan No. 83/2018 dated

23.04.2018. The court recorded the confessional statement of the accused and sentenced him for a simple imprisonment till the rising of the court besides a fine a Rs. 1000/-. It is stated that the story of torture and third degree in confinement was generated and got published by Early Times reporter Asif Iqbal Naik in Early Times Newspaper and on social medial platforms- whatsapp, facebook and twitter with the criminal intention to instigate the peace loving inmates of Kishtwar town and its vicinity to assume the form of unlawful assembly and cause the offences like road blockades, vandalism and destruction of public property etc. whereas the Sr. Superintendent of Police Kishtwar has sought proper permission for registration of proper complaint under Section 505 RPC against the defaulter i.e. Early times Reporter namely Asif Iqbal Naik. It is stated that keeping in view the above mentioned facts, Sr. Superintendent of Police Kishtwar was authorized to lodge FIR against Asif Iqbal Naikk Reporter of Early times News. As such, the FIR in question was registered.

6. Mr. F. S. Butt, learned counsel for the petitioner reiterated the grounds taken in the petition. He further submitted that the present FIR is nothing but an abuse of process of law, as such the same is required to be quashed.

7. On the other hand, Mr. Sunil Malhotra, learned GA vehemently argued that a false news was published by the petitioner so FIR has been rightly lodged against the petitioner.

8. Heard learned counsel for the parties and perused the record.

9. Before appreciating the rival contentions of the parties, it is apt to reproduce Sections 499, 500, 504 & 505 RPC as under :

“499. **Defamation.** — Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said except in the cases hereinafter excepted, to defame that person.

500. **Punishment for defamation.** — Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

504. **Intentional insult with intent to provoke breach of peace.**— Whoever intentionally insults, and thereby give provocation to any person, intending or knowing to it be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

505. **Statement conducting to public mischief.** — 1[(1)] Whoever makes, publishes or circulates any statement, rumor or report, —

(a) with intent to cause, or which is likely to cause, 2 [any officer, soldier, sailor or airman in the Army, Navy or Air Force of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public or any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment [which shall not be less than three years but may extend to ten years and shall also be liable to fine.]

[(2) Statement creating or promoting enmity, hatred or ill-will between classes

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intend to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth residence, language, caste or community or any other ground whatsoever, feeling of enmity, hatred or ill will between different religious, racial language or regional groups or castes or communities, shall be punished with imprisonment [which shall not be less than three years but may extend to ten years and shall also be liable to fine]

(3)Offence under sub section (2) committed to place of worship.etc.

Whoever, commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment 2 [which shall not be less than four years but may extend to ten years.]”

10. Section 499 RPC provides that imputation must be made or published by a person with intention to cause harm or knowing or having reason to believe that such imputation will cause harm to the reputation of such person.

11. This is not in dispute that the petitioner is a journalist by profession and his job is to gather information and publish the same in the newspaper or in any other media. The information published in the form of news may pertain to issues of national/ international importance or local in nature. A mere perusal of the news item reflects that it has been published pursuant to the information disclosed by the kin of Akhter Hussain. Even the names of cousin of Akhter Hussain, namely, Irshad Ahmed and brother Abdul Gani have been reflected in the news item who narrated the said incident. Without commenting upon as to whether the Police department had any locus to initiate the proceedings under section 499 RPC or not as the stage of cognizance has not arrived yet, it is to be seen whether in such circumstances offence under section 499 RPC is made out or not. This Court is of the considered opinion that the publication of the news item on the basis of statement made by the cousin and brother of Akhter Hussain, does not amount to offence under section 499 RPC as the petitioner has been performing his professional duty of reporting the matter. More so, when the complaint was too filed against some of the respondents by the brother of the said Akhter Hussain on 19.04.2018, narrating the similar story. If the respondents were aggrieved of

the same and they had some other version, they too could have resorted to the same mode, by getting published their part of version.

12 So far as allegations with regard to commission of offence under section 504 RPC is concerned, there is no allegation that the petitioner has insulted any one thereby provoking him to break the public peace or commit any other offence. As such, uncontroverted allegations made in FIR do not even constitute offence under section 504 RPC.

13. Now, it is to be seen as to whether as per the allegations leveled in FIR, offence under section 505 RPC is made out or not. In the FIR it has been mentioned that the petitioner by publishing this news item tried to instigate the peaceful public of Kishtwar to commit acts of vandalism, road blockages and acts of destruction of public property. It is reiterated that the petitioner has simply published what was told to him by the kin of Akhter Hussain. As per section 505 RPC, the making, publication or circulating of any statement, report or rumour must be with intention to create alarm in the public or any section of public so as to induce them to commit offence against state or public tranquility. **In Kedar Nath Singh v. State of Bihar**, reported in **AIR 1962 SC 955**, Apex Court while upholding the constitutional validity of section 505 IPC has observed:

29. It is only necessary to add a few observations with respect to the constitutionality of Section 505 of the Indian Penal Code. With reference to each of the three clauses of the section, **it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquillity; or (c) to incite or which is likely to incite one class**

or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under Section 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Article 19 clearly saves the section from the vice of unconstitutionality.

14. The Hon'ble Supreme Court in **Bilal Ahmad Kaloo vs. State of Andhra Pradesh, 1997 (3) Crimes 130 (SC)**, has held that *mens rea* is a necessary postulate for the offence under Section 505 IPC. Thus, *mens rea* is an essential ingredient of offence under section 505 RPC and as section 505 RPC provides a reasonable restriction on the fundamental right to freedom of speech and expression, therefore, the same is required to be strictly construed. The intention to generate the consequences as contained in section 505 RPC must be forthcoming from the plain reading of the statement/report or rumour and should not left at the discretion of a particular person. *Prima facie* there is nothing in the FIR that the petitioner desired to generate the consequences as claimed by the respondents and rather he has performed his professional duty.

15. Further it requires to be noted that the news item was published on 19.04.2018 where as FIR was registered on 12.05.2018 and till then no such offences as anticipated by the respondents were committed by the public. It would be profitable to take note of the observations made by Apex Court in **Balwant Singh v. State of Punjab**, reported in **(1995) 3 SCC 214**:

9. Insofar as the offence under Section 153-A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between

different religious, racial, linguistic or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquillity, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquillity in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153-A IPC, by their raising casually the three slogans a couple of times. The offence under Section 153-A IPC is, therefore, not made out.

16. Further, exception to section 505 RPC clearly provides that it does not amount to an offence within the meaning of this section when a person making, publishing or circulating such report, rumour or report has reasonable grounds for believing that such statement, rumor or report is true and make publishes or circulates in good faith and without any such intent. Even if, for the sake of arguments the offence is made out against the petitioner, still his case would fall within the exception as well, as he published what was narrated by kin of Akhter Hussain. Reliance is placed upon the decision of Apex Court in **Viond Dua vs Union of India & Ors, 2021 SCC Online SC 414**, where in the Apex Court while relying upon number of its earlier decision quashed the criminal proceedings arising out of FIR on the ground that the statements of the petitioner were covered by Exception-2 and Exception-3 of section 499.

17. In *State of Haryana v. Bhajan Lal, 1992, Supp (1) SCC 335* , 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.

18. The mode and manner in which the impugned FIR has been lodged clearly reflects the *mala fide* on the part of respondents as the respondents could have given their version by similar mode but they chose unique method of silencing the petitioner and it is undoubtedly an attack on the freedom of press. Needless to say that press is often referred to as the fourth pillar of democracy and freedom of the press is vital for the functioning of any democratic country like India. No fetters can be placed on the freedom of press by registering the FIR against a reporter, who was performing his professional duty by publishing a news item on the basis of information obtained by him from an identifiable source.

19. The case of the petitioner squarely falls under the category of cases figuring at Sr. Nos. 1 and 7 as mentioned hereinabove in *State of Haryana v. Bhajan Lal* and as such, the FIR impugned is nothing but an abuse of process of law. Mere fact that FIR was lodged only against the journalist and not against the person, who has disclosed the said incident to the journalist *prima facie*, establishes malice on the part of the respondents.

20. In view of what has been said above, the FIR bearing No. 117/2018 dated 12.05.2018 registered by Police Station, Kishtwar for commission of offences under sections 500, 504 & 505 RPC, is quashed .

(Rajnish Oswal)
Judge

JAMMU:
23.08.2021
Karam Chand/Secy.

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