

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

Reserved on : 24.06.2022

Pronounced on : 28.11.2022

CRM(M) No. 232/2022

CrIM No. 1037/2022

Ajay Partap

..... *Petitioner*

Through: Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhimanyu Sharma, Advocate

Vs

UT of J&K and others

..... *Respondents*

Through: Mr. Sumeet Bhatia, GA along with
S.H.O. Majalta- Mr. S. S. Bandral.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGEMENT

01. The power of investigation without knowing the province of investigation is the bane of police investigation proving to be failure in bringing home successful prosecution of criminal cases in the courts of law. The present case presents the exact scenario rendering the very FIR and the so called investigation there under exposed to serious challenge.

02. Of the seven enlisted grounds by the Hon'ble Supreme Court of India in case of "**State of Haryana and others Vs Ch. Bhajan Lal and others**" reported in **AIR 1992 SC 604** for exercise of inherent powers under section 482 of Cr.P.C., 1973 relating to an FIR generated investigation of a criminal case, grounds figuring at serial number 5 & 7 are:-

“(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.

(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.”

03. The facts of the present case fall squarely within the catch of the said two grounds which renders the FIR in the present case attended with the so-called investigation there under liable to be questioned and quashed.

04. The operative facts of the case are that an FIR no. 0023/2022 dated 17.03.2022 came to be registered by the complainant-respondent 2 herein, by personally visiting the Police Station Majalta, district Udhampur for registering the complaint against the petitioner. The contents of the complaint are produced herein to self state the event in the context whereof the FIR was getting registered by the respondent 2 against the petitioner:-

“ Today one complainant namely Kajal Devi D/o Jagdish Chand R/o Battal, tehsil Majalta alongwith her father given a written application in English language against Ajay Partap @ Kalu S/o Om Bhadur R/o Kakraii tehsil Majalta district the contents of application is as. To The Station House Officer, Police Station Majalta. Subject:- An application of KAJAL DEVI D/o Sh. JAGDISH CHAND, R/o village Battal, tehsil Majalta, district Udhampur with a request to take action against one AJAY PARTAP ALIAS KALU S/o Sh. OM BHADUR R/o village Karkrai, tehsil Majalta, district Udhampur who has taken signature on Marriage Agreement fraudulently by forcing the applicant to sign on document

under coercion and threats and without any consent. Sir, the complainant/applicant most humbly and respectfully submitted as under: 1. That the complainant/applicant is permanent resident of above noted address and presently undergoing GNM Training at Nursingh Dev College near Nand Palace Udhampur. 2. That one Ajay Partap who is stranger and made intimacy with the applicant making repeated approached on one pretext of the other. Even the said accused could manage approaching to frauds of the applicant. 3. That it is on 21.10.2021 while the aforesaid applicant was at her house and started her journey to attend the college at Udhampur the said accused with some unknown people along with one lady stopped vehicle and asked to applicant to board in the vehicle with protest that aforesaid applicant will be dropped at Udhampur on the way to her college as the vehicle is being drawn to Udhampur only. But the suppress the said accused have forcibly taken to the applicant to some unknown place and forced her to sign the document by giving threats of killing in case the aforesaid applicant fails to do so. Also the said accused have given threats of killing in case she tells this thing to anyone else. 4. That it is submitted that so far aforesaid applicant has not made any physical contact with the said accused. Moreover, the said document “ Marriage Agreement” is unregistered document has not valid in the eyes of law and has liable to be invalid as cancelled and same the document has been signed under coercion, threats and under pressure and liable to be treated as null and void. It is most humbly prayed that the document Agreement Marriage may be taken as cancelled with further request to register complaint and take action against the accused under law for committing fraud, with the applicant. Yours faithfully, KAJAL DEVI D/O Sh. Jagdish Chand, R/o Village Battal, Tehsil Majalta, District Udhampur (U.T of J&K) Dated: 15.03.2022”

05. On the basis of the complaint so registered by the respondent 2, the FIR against the petitioner got registered for commission of offences under section 366 & 506 of the Indian Penal Code (IPC), 1860. Section 366 IPC pertains to kidnapping, abducting or inducing the woman to

compel her marriage etc., and section 506 IPC pertains to punishment for criminal intimidation. By no stretch of reading and reference, the respondent 2, who was major at the time of alleged incident, ever faintly hinted any act of omission or commission against the petitioner amounting or attempting outraging the modesty of the respondent 2 lest that of subjecting the respondent 2 to an offence of rape or any attempt thereof.

06. The petitioner, on getting confronted with registration of said FIR against him, came rushing to this Court with the present petition under section 482 of the Code of Criminal Procedure, 1973 for seeking quashment of the said FIR by divulging the facts from his end that the petitioner and the respondent 2, on their own volition and free-will, had forged marital ties, which being a runaway marriage, and for that even got a marriage agreement dated 21.10.2021 executed and duly notarized accompanied with solemnization of marriage taking place in Arya Samaj Mandir.

07. In support of the averments made in the petition, the petitioner came to disclose & annex a notarized copy of the marriage agreement dated 01.10.2021 duly witnessed by two persons, copy of Aadhar Card of the respondent 2 mentioning her date of birth to be of 22.04.2000 along with school related documents of the respondent 2 and Arya Samaj Mandir marriage related photographs. Thus, the petitioner sought to question the very intent and genuineness of the said FIR on the ground

that after the solemnization of marriage on 21.10.2021, the respondent 2 had even gone back on the very same day to her parental house on the understanding with the petitioner that she would not be saying to her parents about the fact of her having solemnized the marriage with the petitioner for which she needed time to make her parents understand and reconcile for accepting the petitioner as husband of the respondent 2 so as to ward off any later trouble in their marital relationship getting posed from the parental side of the respondent 2. As per the petitioner's understanding, as averred in the petition, the respondent 2 acting under the parental pressure, came to register the said FIR bearing her allegation against the petitioner only to the extent of so-called abducting or inducing her to compel her marriage and criminal intimidation on the day when the execution and registration of marriage agreement and the performance of marriage ceremony in Arya Samaj Mandir had taken place.

08. This Court, in terms of an order dated 07.04.2022, while entertaining the present petition and directing notice to the respondents, had come to direct the continuation of the investigation to its conclusion but no filing of the final police report (criminal challan) upon the outcome of the investigation before a competent court of law without prior permission of this Court.

09. During the pendency of the present petition, this Court came to be approached with an application dated 06.06.2022 filed by and on behalf of the S.H.O. Police Station, Majalta for seeking permission for

production of challan related to said FIR no. 0023/2022 for offences, which included addition of offences under section 376/328/109 IPC, along with originally mentioned offences under section 366/506 IPC.

10. In response to the said application of the S.H.O. Police Station, Majalta, this Court came to direct production of the case diaries and the record of investigation for the purpose of adjudicating the present petition under section 482 Cr. P.C. in the fullness of facts and circumstances of the case instead of putting a simpliciter disposal thereof merely on the plea of the respondent 1 that the final police report/ challan in the case was ready to be filed.

11. By having the case diaries along with purported Police Report/Challan awaiting to be presented by the S.H.O. Police Station, Majalta for the purpose of subjecting the petitioner to face trial in the court of law, this Court got an opportunity to scan and examine the said record to find itself seriously concerned about the manner in and mindset with which the so-called investigation in the case came to take place to the extent of even getting mention of offences under section 376 IPC in the case against the petitioner as if for the Police to present a woman, who being respondent 2 in the present case, as being a victim of rape was a matter of ritual and routine.

12. The purported final police report/challan, which came accompanying with the case diary file, reflects that while carrying out investigation in the FIR under section 366 & 506 IPC, the Investigating

Officer had come to examine at the very first instance the parents of the respondent 2 by having their statement under section 161 Cr. P.C. recorded on 18.03.2022. The parents of respondent 2 along with one non-relative witness namely Kuldeep Raj also got examined on the very same date and said three witnesses were examined by the Investigating Officer relating to their purported version only to the offences as mentioned in FIR which being 366/506 IPC and not, by any remote reference, any allegation even to the extent of outraging the modesty of respondent 2 lest that of committing any rape of the respondent 2 was ever made.

13. The Investigating Officer handling the case, for the reasons which are nothing but reflective of taking the investigation as a fun venture on his part, took the respondent 2 for her examination under section 164 Cr. P.C. before the Judicial Magistrate Ist. Class on 22.03.2022. Thus, after having first examined the respondent 2's parents and so called non-relative witness, all of whom were saying nothing with respect to any rape related incident concerning the respondent 2, the Investigating Officer had taken the respondent 2 for her examination on 22.03.2022 in which examination before the Judicial Magistrate Ist Class, the respondent 2 had come to make a one line passing whisper therein to the extent that the petitioner had earlier committed rape of the respondent 2.

14. By reference to this single line whisper, the Investigating Officer concerned had added offence under section 376 read with section

366/506 IPC in the said FIR. Now, in case the investigation was to attend to offence of rape under section 376 IPC as per the said 164 Cr.P.C statement, it was expected of the Investigation Officer to have carried forward his investigation to each and every aspect of the accusation related to said offence but it did not bother the concerned Investigation Officer to examine any other witness, make site examination of the place of alleged rape, undertake the collection of evidentiary material. Nothing of that sort was ever examined and done by the Investigating Officer other than the three already examined persons as witnesses in the case for commission of offences under section 366/506 IPC and still the so-called final police report/challan came to be prepared by the Investigating Officer on the basis of which the S.H.O. Police Station, Majalta came forward with the application for allowing presentation of challan in the case for commission of offences under sections 376/328/109 IPC.

15. Thus, without any addition of facts being brought on record on the basis of an investigation with respect to the alleged event of so-called commission of rape of the respondent 2, the Investigating Officer concerned did the paper work in the name of the investigation for the purpose of booking the petitioner for the commission of offence of rape as well.

16. A perusal of the record presented before this court, a fact emerges that for the purpose of registration of FIR no. 0023/2022 dated 17.03.2022, the respondent 2 had submitted a typed application bearing

her signature and the said application is dated 15.03.2022 but visit to the Police Station was made on 17.03.2022. This typed & signed application of the respondent 2 is pointing to the fact that writing of the said application was done with all consciousness and awareness in which not even a reflection of an act of alleged rape against her has been hinted by the respondent 2 and rather it has been very clearly mentioned in the said application that there was no physical contact of the respondent 2 with the petitioner. The tone and tenor of the said application was actually for seeking the intervention of the Police to retrieve and get hold of the marriage related agreement from the petitioner so that the respondent 2 and her parents are able to wash away the said aspect of the so-called marriage of the petitioner and the respondent 2 from getting public at the end of the petitioner. The Investigation Officer had least bothered to even go and examine the Pujari of the Arya Samaj Temple who had carried out the purported marriage rituals so as to know as to whether the physical presence of the respondent 2 in joining the purported ceremony was under duress/coercion or was seemingly voluntary. Even the Notary Public, before whom the petitioner and the respondent 2 had subscribed themselves to the execution of the purported marriage agreement, was left unexamined by the Investigation Officer to probe as to under which circumstances and with what demeanour the respondent 2 was acting and appearing before him or for that matter ever appeared before him.

17. This application of the respondent 2 gets translated into FIR for offences under section 366 IPC and then proceeds to creation of a case of

rape of the respondent 2 by the petitioner. This is nothing but a flight of fancy on the part of the Investigating Officer of the case, in which the Investigating Officer concerned was least sensitive even to the very social and personal reputation of the respondent 2. In the eventuality of the challan being presented as it is, for which the permission had come to be sought by the S. H. O. Police Station, Majalta from this Court, then that would have meant the respondent 2 being stamped with status of a victim of rape at the hands of the petitioner but without any supporting factual basis in the very said police report (challan). While the respondent 2 had lodged the complaint in order to safeguard her reputation from the guilt of having subscribed herself to so-called marriage with the petitioner, on the other hand she was sought to be subjected to bear that shame of being a rape victim at the hands of the petitioner by the so-called investigation at the hands of the Investigating Officer in the case.

18. Thus, this Court is convinced that not only the FIR in itself but even the entire course of so called investigation as conducted in the case by the Police Officer concerned is nothing but sham and shoddy, which deserved to be nipped in the bud before it results damaging to the reputation of the respondent 2 on one hand for all time to come but also subjects the petitioner to misconceived criminal persecution in the name of police challan having been filed by reference to the said FIR.

19. Feeling concerned by the state of facts and circumstances, a perception cannot avoid to gather a sort of confirmation that while the

Police Investigation acts with relish to exhibit its harassment bearing power of investigation aiming more to quick fix the facts into its view point of accusation but faintly knows the province of investigation out of which the full facts are to be drawn out to prove the script of the crime in all its details. While the power of investigation is given by the Code of Criminal Procedure, 1973, the province of investigation is provided by the Indian Evidence Act, 1872. Section 3 of the Indian Evidence Act, 1872 provides when a “Fact” is to be held Proved/Disproved and Not proved before a Court of law. It is by this principle of proof that a court of law enables itself to make verdict in a case/cause, be it a civil or criminal cause getting trial before it. It is through the field of facts as envisaged under the Indian Evidence Act, 1872 that the police investigation has to charter itself to identify the true facts of accusation. The very definition of “Fact in Issue” & “Relevant Fact as given in the very opening of section 3 of the Indian Evidence Act, 1872 are encyclopaedic of what is to come out before a court of law either in a civil case or criminal case before it in which a court of law has to make an adjudication. It is with respect to this definition of “Fact” that definition of expressions “Proved, Disproved and Not Proved” come into play through judgment making of a court of law dealing with trial of case/cause. The Police Investigation has to be led and driven by the domain concepts of “Facts in Issue” and “Relevant Facts.” If a given Police Investigation has least bothered to follow the script of said two domains, then in the name of Police Investigation what is taking place

would be nothing but paper collection and compilation venture by the Investigation Officer so as to claim the service credit of having prepared and submitted a police report/challan in a court of law unmindful of its soundness and sustainability in a court of law.

20. The Hon'ble Supreme Court of India has in the case of **Pooja Pal versus Union of India (2016 AIR SC 1345)** dwelled upon the subject and state of police investigation in a criminal case. Para 88 and 89, through their brevity pick the breadth of the matter, and are reproduced herein to bear the appreciation and understanding:

“88. Adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in Manohar Lal Sharma vs. Principal Secretary and others (2014)2SCC 532: (AIR 2014 SC 666) that the aim of investigation is ultimately to search for truth and to bring the offender to book. The observations of Lord Denning in his rendering in “The Due Process of Law” First Indian Reprint 1993 page 102 were alluded to at page 553 as under:

“In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants.”

89. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsisized in the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation – Basic Perspectives by Paul B. Weston and Renneth M. Wells:

“Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognizing that even a minor contradiction or error may destroy confidence in their investigation.

The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime – the certainty that a criminal will be discovered, arrested and convicted.”

21. In the name of the investigation in the present case, only an empty formality has been carried out by the Investigation Officer/s leaving the truth of the case a casualty. In fact, the very FIR on the face of it pointed towards a fact that its latent objective was to force the petitioner to part with the marriage related documents and photographs for enabling the respondent 2 to act as per the dictate of her parents. Thus FIR and its so called investigation are act of abuse of process of law

aimed against the petitioner and others named therein and as such both deserve to be quashed and are accordingly so quashed.

22. The record of the Case Diary file be returned to the SHO Police Station concerned.

Disposed of.

(Rahul Bharti)
Judge

Jammu
28.11.2022
Muneesh

