

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No. 144/2013;
APPCR No. 28/2013

Reserved on: 22.11.2022

Pronounced on: 29.11.2022

Kamlesh Devi & Ors.

...Petitioner (s)

Through: Mr.Rakesh Chargoitra, Advocate

State of J&K & Ors

Vs.

...Respondent(s)

Through: Mr. Pawan Dev Singh, Dy. AG and
Mr. RP Sapolia, Advocate

CORAM: HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

JUDGMENT

1. Petitioners through the medium of this petition seek quashment of an order dated 28.7.2010 passed by Learned Judicial Magistrate (Special Mobile Magistrate Passenger Tax and Shops Act) Jammu, in a final report titled State through Police Station KanaChak vs. Nemo, whereby the learned Magistrate has directed the respondent no. 4 Sr. Superintendent of Police (Crime Branch) Jammu, to re-investigate the matter i.e. FIR No. 35 of 2009 registered at Police Station Kanachak Jammu, against the petitioners for the commission of offences punishable under sections 420,467,468,471 RPC and also for quashing the FIR No. 35 of 2009 and the charge sheet arising therefrom titled State vs. Kamlesh Devi & Ors.

2. One Beero Devi wife of Naseeb Singh R/O Batera, Tehsil and District Jammu (hereinafter called ‘complainant’ for short) on 24.3.2009 filed a complaint against Kamlesh Devi, petitioner No. 1 herein and Principal Sun Star Academy, Ban Batera, Tehsil & District Jammu, in the court of learned Chief Judicial Magistrate Jammu, who exercising the powers under Section 156(3) CrPC, ordered In-charge Police Station KanaChak to proceed in the matter to carry out the investigation. On the directions of Learned Chief Judicial Magistrate Jammu, a case was registered, vide FIR No. 35 of 2009 at Police Station Kanachak and after collecting the material/documentary evidence and recording the statements of witnesses and also complying with all the formalities which were required to complete the investigation found that the allegations levelled in the complaint were false, manipulated and without any basis and that it was a fit case to proceed against the complainant under section 182 CrPC for having lodged a false and frivolous case. SHO Police Station concerned filed a closure report (Ikhtatami) before the Court of Learned Chief Judicial Magistrate Jammu who transferred the case to the Court of Ld. Special Mobile Magistrate Passenger Tax and Shops Act Jammu for disposal under law.
3. Learned Magistrate, after issuing notice to the complainant Beero Devi, recorded her statement, wherein she deposed that she was not satisfied with the investigation; that the investigation be transferred to the Crime Branch Jammu. Learned Magistrate vide his order dated 28.7.2010 transferred the investigation of the case in question from Police Station Kanachak Jammu to a different police agency i.e. Crime Branch Jammu to investigate the matter making the

reference of SRO 202 dated 03.06.1999, with the understanding that the Crime Branch Jammu was empowered to carry out the investigation in the case of forgery.

4. Pursuant to the directions of Learned Magistrate, Crime Branch Jammu reinvestigated the case registered vide FIR No. 35 of 2009 as CR/R/FIR/35 of 2009/Kanachak/11169 dated 6.9.2010 filed the charge sheet for the commission of offences punishable under section 420,467,468,471,201,120-B RPC before the Court of learned Chief Judicial Magistrate Jammu who assigned the case to Ld. Municipal Magistrate Jammu, who was pleased to commit the said case to the Principal Sessions Court Jammu. The sessions Court vide order dated 11.10.2012 chargesheeted all the petitioners for the commission of offences punishable under section 420,467,468,471,201,120-B RPC and directed the prosecution to lead evidence.
5. The petitioners have assailed the order dated 28.07.2010 passed by Learned Special Mobile Magistrate whereby final closure report titled 'State through Police Station Kanachack v. Nemo' was not accepted and respondent Crime Branch Jammu was directed to re-investigate the matter. Petitioners have also sought quashment of the FIR and challan arising out of that pending before the court of Principal Sessions Court Jammu against the petitioners.
6. Mr. Chargoitra learned counsel for the petitioners argued that neither the Ld. Magistrate was not competent to direct re-investigation of the case to be carried out by a different police agency i.e. Crime Branch Jammu, nor Crime Branch was competent to investigate the matter in terms of SRO 202 dated 03.06.1999 which does not

empower to Crime Branch Police Station to investigate any of the offences which is not scheduled in the Annexure to SRO. While drawing attention to the SRO 202 of 1999, learned counsel submits that the Crime Branch was competent to investigate to note forgery cases and not all other forgeries as such learned Magistrate had passed an order which he was not competent to pass and the Crime Branch had also taken up the investigation which it was not competent to investigate. Ld. Counsel for the petitioners arguing the initial order passed by the learned Magistrate transferring the investigation from Police Station Kanachak to Crime Branch Jammu and the subsequent investigation by the Crime Branch and laying of the charge sheet being all illegal submitted that the The order passed by the Learned Magistrate to investigation into the case and the charge sheet arisen out of the case are liable to be quashed in the interest of justice as this is sheer abuse of legal process.

7. Mr. Pawan Dev Singh, Dy. AG, appearing on behalf of the official respondents argued that the proceedings cannot be quashed for the reason that the offences of which the petitioners have been charged, during investigation of this case were found to have been committed by them and any irregularity as pointed out by the learned counsel for the petitioners cannot vitiate the proceedings. He has also argued that the petitioners have assailed the order passed in the year 2010 awaiting all along to await the outcome of the investigation of the Crime Branch and the petitioners have filed this petition only when they were chargesheeted by the trial Court. He submits that since reinvestigation was completed which culminated into charge sheet and the trial court has also considered the charge, due to inordinate

delay in filing the petition, their petition requires to be dismissed. He further argued that since the earlier order passed by the learned Magistrate had merged into the order of trial court which chargesheeted the petitioners and under the doctrine of merger, the order passed by the learned Magistrate cannot be questioned now. He further argued that the petitioners have been accused of serious allegations to grab a government employment on the strength of fake certificate.

8. Mr. Sapolia learned counsel for respondent no. 5 who is complainant in the criminal case argued that the respondent as complainant had filed objections against the closure report and after recording her statement the impugned order had been passed by the learned Magistrate. Since the petitioner no. 1 was a police official, as such, the local police had favoured and exonerated her from the charges. He further argued that the Crime Branch was competent to investigate the case of fraud, theft or cheating of a particular nature as provided in the Annexure to SRO 202 dated 03.06.1999. He further argued the petitioners as accused before the trial court had not raised these points which they have raised in this petition, at the time of consideration of the charge and on this count also the proceedings against them cannot be quashed. He prayed that petition be dismissed.

9. Heard, perused and considered.

10. Two important questions have been raised to be addressed by this court:

i/ Firstly, that whether a judicial Magistrate is competent to transfer the investigation of the case from local police station to Crime Branch of the police agency; and

ii/ Secondly, that whether the Crime Branch was competent to conduct investigation of a case regarding forgery of a certificate as per the directions of the Magistrate.

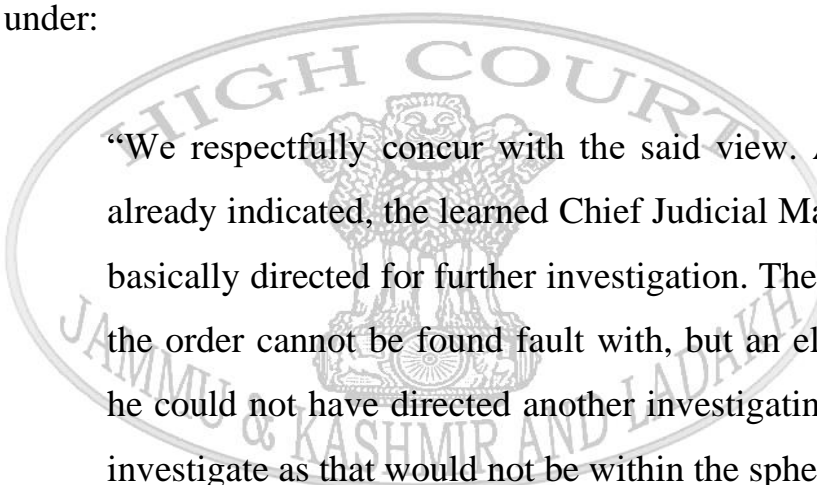
11. Coming to first question , as to whether Magistrate can order reinvestigation by a different agency, Hon'ble Apex Court in **Vinay Tyagi v. Irshad Ali** reported as **2013 (5) SCC 762** has laid down the law para 33 and relevant extract of para 40 are reproduced as under for ready reference:

33.“At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under section 482 of the Code or even Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. “Fresh”, “de novo” and “reinvestigation” are synonymous expression and their result in law would be the same. The superior court are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.”

40.“...Whether the Magistrate should direct “further investigation” or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct “further investigation” or “reinvestigation” as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even

investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.”

- 12.** The Hon’ble Apex Court again in a case in a case **Chandra Babu @ Moses v. State through Inspector of Police & Ors.** reported as **2015 (8) SCC 774** concurring in the earlier view taken in **Vinay Tyagi’s** case held in para 21 which, for ready reference is extracted as under:



“We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency”.

- 13.** In view of the authoritative pronouncements by the Hon’ble Apex Court in the cases (supra) it is clear that no other Court except the Superior /Constitutional Courts is vested with the powers to order reinvestigation or transfer investigation of a case from one agency to another, to secure the ends of justice, therefore, in the present case impugned order passed by learned Judicial Magistrate is without jurisdiction to order re-investigation as well as transferring the investigation from police to Crime Branch , the impugned order is thus not sustainable on this count.

- 14.** Coming to the second question as to whether Crime Branch was competent to conduct the investigation of a case regarding forgery of

a certificate as per the directions of the Magistrate. Government of J&K through Home Department issued Notification (SRO 202 dated 23.6.1999) specifying the classes of cases to be investigated by the crime branch within the State of J&K for the purposes of registration and investigation. Annexure appended to the notification specifies the nature of the cases or offences under certain Acts/Code which can to be investigated by the Crime Branch. The first item in the Annexure is 'note forgery case'. The case on hand though relates to forgery of a document but it cannot be covered under the note forgery cases and in view of the considered opinion of this court it relates to currency note.

15. Learned counsel for the respondent/complainant further argued that the case of fraud/cheating is also included in item 7 which provides that the cases of fraud, theft or cheating of a peculiar nature which affects more than one District can be investigated by the Crime Branch. The case on hand does not pertain to such a case, which has inter district ramification/involvement. Therefore, fraud or cheating as alleged in this case cannot be stretched to a cheating effecting more than one district, as such, the offences punishable under Section 420,467, 468,471 RPC given to the facts of the case and not involving more than one District, cannot be registered or investigated by the crime branch. Notification (SRO 202) further stipulates that the crime branch can also register other cases for investigation which may be referred to it by the Govt. or Director General of Police from time to time. The case on hand is not assigned to the crime branch either by the Govt. or by the

Director General of Police but by a Judicial Magistrate, who as already discussed, was not competent to transfer investigation of the case from one investigating agency to other. This question had already been raised before this court in Cr. Revision No. 78/98 (**State vs. Muneer Ahmad & Ors**) and **Cr. Rev.No. 10 of 1999 (State v. Bharti Katoch & Anr)** and a Single Bench of this Court referred the matter vide order dated 22.05.2000 to a larger Bench for determination/decision. While interpreting, the Division Bench of this Court vide judgment dated 28.8.2002, passed in the aforesaid Revisions held that the Crime Branch was competent to register and investigate the cases specified in the notification only. This question is thus determined that the crime branch can register and investigate only those crimes which either find place in the annexure to the notification or have been ordered to be investigated by the Govt. or by the Director General of Police.

16. Having regard to the aforesaid discussion, it is held that the learned Magistrate was neither competent to order re-investigation of the case nor to transfer investigation of the case from one agency to another agency. It is made clear that Magistrate is, however, competent to order further investigation in terms of Sub Section 8 of Section 173 CrPC, if not satisfied with the investigation carried by an agency, the re-investigation of the case can be ordered by the High Court or by Hon'ble Supreme Court only.
17. In this backdrop of the matter, it is held that the learned Magistrate was not competent, for lack of jurisdiction, to pass the impugned order, whereby, he had directed to reinvestigate a case registered at Police Station Kanachak and also transferred the investigation to

crime branch Jammu. The order is thus bad and is not sustainable. Investigation carried out by the Crime Branch and the chargesheet laid, as a result of that investigation based on the impugned order are also not sustainable. The impugned order and the proceedings arising out of it thus require interference by this Court.

18. Now the question as to whether a case which required further investigation, FIR in that behalf is to be quashed. In the considered opinion of this Court having regard to the serious allegations that one of the petitioners as abetted by others had managed fake certificate fraudulently and succeeded to manage job in Police Organization of the UT of J&K. The case registered against the petitioner required further investigation, as such, the contention of the petitioners to quash FIR No. 35 of 2009 seems to be misconceived and is liable to be rejected.

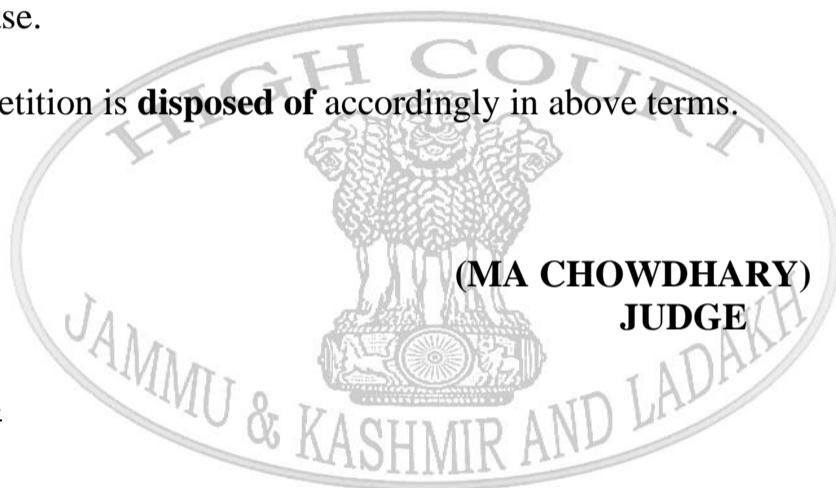
19. For the foregoing reasons and observations made hereinabove, the petition is partly allowed with the following directions:

- a/** The impugned order dated 28.7.2010 passed by Learned Judicial Magistrate to the extent of reinvestigation and transfer of the investigation from Police Station Kanachak to Crime Branch is quashed. However, the order to the extent not accepting the closure report filed by Police Station Kanachak is upheld.
- b/** The investigation and the chargesheet formulated by Crime Branch after its investigation pursuant to the impugned order is ordered to be quashed.
- c/** The petition to the extent of seeking quashment of FIR No. 35/2009 registered at Police Station Kanachak is rejected

with a direction to the SHO Police Station Kanachak to further investigate the case.

SHO Police Station Kanachak is expected to investigate the case on fast track basis so that the culprits, if any, are brought to book at the earliest and in case the petitioners are found innocent they may be allowed to live in peace. I may hasten to add that I have not expressed any opinion relating to any of the factual aspects of the case.

20. Petition is **disposed of** accordingly in above terms.



Jammu
29.11.2022
Mujtaba

Whether the order is reportable: Yes / No