

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 21.07.2022
Pronounced on: 26.07.2022

CRMC No.228/2018

ROUF MAJID NAQASH

... PETITIONER(S)

Through: - Mr. Sajad Ahmad Mir, Advocate.

Vs.

SHO, P/S WOMEN'S WING & ANR.

...RESPONDENT(S)

Through: - Mr. Sajad Ashraf, GA.

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

JUDGMENT

- 1) The petitioner has challenged FIR No.07/2018 for offences under Sections 498-A and 406 RPC registered with Police Station, Women's Wing, Srinagar.
- 2) It appears that respondent No.2 filed an application under Section 156(3) of the Cr. P. C before the Court of Chief Judicial Magistrate, Srinagar, in which it was alleged that the petitioner happens to be her husband with whom she has entered into wedlock 12 years back and out of this wedlock, one son has been born. It was alleged in the complaint that the petitioner has been subjecting her to continuous harassment on different occasions in connection with demands of dowry. It was further alleged that the petitioner, in order

to achieve his nefarious designs, has used all types of brutalities, torture, harassment etc. against the complainant/respondent No.2. She went on to allege that this attitude of the petitioner was brought to the notice of respectable persons and his relatives but there was no change in the attitude of the petitioner. It was also alleged that the petitioner has forcibly and unlawfully taken away all the ornaments and other valuable property of respondent No.2/complainant and has kept it in his illegal custody so that the same could be used for any other purpose. It was also averred in the application that the complainant had approached the police station but there has been no response on their part which compelled her to file the application before the Court. The application was supported with an affidavit of respondent No.2/complainant. The Chief Judicial Magistrate, Srinagar, vide his endorsement dated 8th March, 2018, forwarded the complaint to SHO, P/S Women's Wing, Rambag, with a direction for registration of FIR. Accordingly, the impugned FIR came to be registered by respondent No.1.

3) It appears that after completion of investigation in the impugned FIR, charge sheet has also been laid before the competent court according to which offences under Section 498-A and 406 RPC stand established against the petitioner

4) The petitioner has challenged the impugned FIR on the grounds that there is already a matrimonial litigation pending between the

parties before the court at Sharjah UAE where the petitioner and respondent No.2 are presently residing separately. According to the petitioner, it was not open to respondent No.2 to lodge the impugned FIR against the petitioner as the same has been done in order to evade the outcome of the proceedings pending before the court at Sharjah. It is further contended that the petitioner has not committed any offence, as such, the registration of impugned FIR is an abuse of process of law. It is also contended that as per own showing of respondent No.2, she has left the house of the petitioner on 23.07.2016 but she did not lodge any complaint against the petitioner until 08.03.2018. According to the petitioner, there is no explanation for the delay in lodging the impugned FIR which makes the story projected in the said FIR suspicious. It is also contended by learned counsel for the petitioner that the guidelines laid down by the Supreme Court in **Priyanka Srivastava and another vs. State of UP and others, AIR 2015 SC 1758**, have not been adhered to by the learned trial Magistrate while directing registration of FIR on the basis of complaint made by respondent No.2.

5) Respondent No.1 has filed the response to the petition. In the response, besides narrating the contents of the impugned FIR, it has been averred that after investigation of the case, offences under Section 498-A and 406 RPC stand established against the petitioner. It is further averred that search of the petitioner was conducted but he

could not be arrested despite various efforts made by the investigating officer. It is further averred that a warrant under Section 25 of the Police Act stands issued against the petitioner but he is absconding and evading his arrest. It is also averred that the learned trial court, before whom the charge sheet has been filed against the petitioner, has issued general warrants of arrest against the petitioner and he has been declared as absconder.

6) The respondent No.2/complainant has not responded to the notice of this Court.

7) I have heard learned counsel for the parties and perused the material on record including copy of the charge sheet that has been filed before the trial court.

8) So far as the contents of the impugned FIR, which is based upon the complaint made by respondent No.2 before the learned Chief Judicial Magistrate, Srinagar, are concerned, the same clearly disclose commission of offences under Section 498-A and 406 RPC. The complainant has levelled serious allegations of demands of dowry and claimed that she has been subjected to torture and cruelty by the petitioner in connection with demands of dowry. A perusal of the statements made by the prosecution witnesses during the investigation of the case reveals that the case projected by respondent No.2 in the impugned FIR stands substantiated by these statements. The witnesses

have clearly stated that on 26th July, 2016, respondent No.2 was driven out by the petitioner from his home after giving a severe beating to her whereafter he left for Dubai. Thus, there are allegations against the petitioner that he has committed the acts of cruelty against respondent No.2 and some of these acts have taken place at Srinagar.

9) The question as to what would be effect of lodging of FIR in March, 2018 in respect of an event that is alleged to have taken place in July, 2016 cannot be gone into in these proceedings. Its effect can be gone into only by the trial court during the trial of the case. The material on record, particularly the material collected by the investigating agency during the investigation of the case, clearly suggests that respondent No.2 has been subjected to cruelty and jewelery belonging to her has been retained by the petitioner. A list of the items of jewelery is also on record of the challan. Thus, it cannot be stated that from the material on record no offence is made out against the petitioner.

10) The contention of the petitioner that the matrimonial litigation is going on between petitioner and respondent No.2 in the courts at Sharjah and, as such, respondent No.2 could not have lodged the impugned FIR, is without any merit for the reason that the scope of litigation relating to divorce or restitution of conjugal rights is different from the scope of criminal proceedings. The proceedings for divorce or restitution of conjugal rights are civil in nature while as the

purpose of proceedings for lodging of an FIR is to set the criminal law into motion, which is aimed at punishing the erring husband for his acts of cruelty. Therefore, merely because matrimonial litigation between the parties is going on at Sharjah would not be a ground to quash the impugned FIR.

11) It has also been contended by learned counsel for the petitioner that the learned Chief Judicial Magistrate, while directing the police to register an FIR, has not adhered to the guidelines laid down by the Supreme Court in **Priyanka Srivastava's** case (supra). In this regard it is to be noted that in the instant case, respondent No.2 had specifically stated in her application before the learned Magistrate that she had approached the police but they did not take any action in the matter. The application of respondent No.2 is supported with her affidavit. Therefore, there is substantial compliance to the guidelines laid down by the Supreme Court in **Priyanka Srivastava's** case (supra), inasmuch as respondent No.2 before approaching the learned Magistrate, had knocked the doors of the police agencies.

12) Apart from the above, the record shows that the petitioner has not appeared before the trial Magistrate as yet and he has been declared as an absconder by the learned Magistrate. A person who has been declared as an absconder by a court and against whom an arrest warrant has been issued is not entitled to the relief of quashing of FIR by taking recourse to Section 482 of the Cr. P. C. Such a petition by

an absconder is not maintainable. On this ground alone, the instant petition deserves to be dismissed.

13) Learned counsel for the petitioner has submitted that the proceedings in the impugned FIR were stayed by this Court in terms of order dated 7th June, 2018 but despite passing of stay order, respondent No.1 proceeded to investigate the FIR and present the challan before the trial Magistrate. It is contended that respondent No.1 has violated the order of this Court.

14) When we have a look at the record of the case, it comes to the fore that the petitioner has not placed on record anything to show that he had brought order dated 7th June, 2018 to the notice of respondent No.1. A perusal of the file reveals that it is only on 7th December, 2019, that respondent No.1 put in its appearance before the trial Magistrate through counsel. Therefore, it can be deemed that respondent No.1 came to know about order dated 7th June, 2018 only on 7th December, 2019. The investigation in the impugned FIR has been completed in October, 2019 and challan was filed before the trial Magistrate on 30th October, 2019. Thus, prior to aforesaid order of stay of proceedings in the impugned FIR, respondent No.1 had already completed the investigation of the case and laid a challan before the trial court. In this view of the matter, it cannot be stated that respondent No.1 has acted intentionally in breach of the order passed by this Court.

15) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. The interim order passed by this Court, whereby investigation of the impugned FIR has been stayed, shall stand vacated.

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

(SANJAY DHAR)
JUDGE

Srinagar,
26.07.2022
"Bhat Alraf, PS"

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

