(2022) 05 J&K CK 0029

Jammu And Kashmir High Court (Srinagar Bench)

Case No: Criminal Miscellaneous Cases No.90 Of 2017

Shafiq Ahmad Qureshi	APPELLANT
Vs	
State Of J&K & Anr	RESPONDENT

Date of Decision: May 11, 2022

Acts Referred:

- Jammu And Kashmir State Ranbir Penal Code, 1989 - Section 379, 427, 447
- Code Of Criminal Procedure, 1989 - Section 251A
- Code Of Criminal Procedure, 1973 - Section 161, 173

Hon'ble Judges: Sanjay Dhar, J

Bench: Single Bench

Advocate: R. A. Jan, Aswad Attar, Ilyas Nazir Laway, Aijaz Chesti

Final Decision: Dismissed

Judgement

Sanjay Dhar, J

1) The petitioner has challenged order dated 15.12.2016, passed by the learned Judicial Magistrate 1st Class, Tangmarg, whereby he has been

charged for offences under Section 379, 427, 447 RPC.

2) It appears that on 20.09.2014, respondent No.2 lodged a report with the police alleging therein that he is in possession of the land under Survey

No.740 adjacent to Hotel Khalil Palace situated at Gulmarg whereas the petitioner is also in possession of the land adjacent to the aforesaid land of

respondent No.2/complainant. It was further alleged that there is a long standing land dispute between the parties regarding which cases are pending

adjudication before the Court at Tangmarg. It was alleged that on 19.09.2014, the petitioner trespassed into the land in possession of respondent

No.2/complainant and he demolished the wooden hut that was constructed on the aforesaid land whereafter he also took away vehicle of the

respondent No.2/complainant, which bears registration No.JK05C-3004. On the basis of this complaint, the police registered FIR No.26/2014 and

started investigation of the case. after investigation of the case, offences under Section 379, 447, 427 RPC were found established against the

petitioner and the challan was laid before the trial court. Vide the impugned order dated 15.12.2016, the learned trial court framed charges for

offences under Section 379, 447, 427 RPC against the petitioner.

3) The petitioner has challenged the aforesaid order of the learned trial court on the grounds that the material on record of the challan, even if taken at

its face value, does not make out any offence against the petitioner; that the vehicle, which is alleged to have been stolen by the petitioner, does not

belong to respondent No.2/complainant nor there is any material on record to show that the petitioner has removed the said vehicle from the

possession of the respondent No.2/complainant; that the property in question regarding which offence of mischief and criminal trespass is alleged to

have been committed by the petitioner, belongs to one Prithvi Nath and not to respondent No.2/complainant, as such, no offence is made out against

the petitioner and that respondent No.2/complainant is an influential person, who has misused the police machinery in order to harass the petitioner.

4) The official respondent has filed the status report in which it has repeated and reiterated the allegations made against the petitioner in the charge

sheet.

5) I have heard learned counsel for the parties and perused the material on record including the trial court record.

3) The challenge in this petition has been thrown by the petitioner to the order of framing charges passed by the learned trial court. Section 251-A of

the J&K Cr. P. C governs the matters relating to charge and discharge of an accused in warrant trial cases by Magistrates. Sub-Section (1), (2) and

(3) of the said provisions are relevant to the context and the same are reproduced as under:

Section 251-A:

(1) when, in any case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of a trial,

such Magistrate shall satisfy himself that the documents referred to in section 173 have been furnished to the accused, and if he finds that

the accused has not been furnished with such documents or any of them, he shall cause them to be so furnished.

(2) If, upon consideration of all the documents referred to in section 173 and making such examination, if any of the accused as the

Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the

charge against the accused to be groundless, he shall discharge him.

(3) If, upon such documents being considered, such examination, if any being made and the prosecution and the accused being given an

opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence

triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he

shall frame in writing a charge against the accused.

4) From a conjoint reading of the aforequoted provision, it is clear that if upon consideration of the documents laid before the Magistrate under Section

173 of the Cr. P. C and after hearing the parties, the Magistrate considers that the charge against the accused is groundless, he has to be discharged.

In case the Magistrate is of the of opinion that there is ground for presuming that the accused has committed an offence triable by the Magistrate, he

has to frame charge in writing against the accused. Thus, in order to entitle an accused to an order of discharge, it has to be shown that from the

material on record produced before the Magistrate, the charge against the said accused appears to be groundless.

The expression â€˜groundlessâ€™ is to be understood as being opposite to the expression â€˜ground for presuming that the accused has committed

the offenceâ€™. This Court in the case of State v. Ram Rattan, 2006(1) J&JKJ 130, has held that the expression â€˜ground for presuming that

accused has committed the offenceâ€™ means that a mere suspicion is enough to suggest commission of offence by the accused.

5) In the light of the foregoing legal position, let us now analyze the material assembled by the investigating agency during the investigation of the case.

We have on record statements of the witnesses recoded by the investigating agency under Section 161 of the Cr. P. C. PWs Mohammad Ashraf

Bhat, Nissar Ahmad Bhat, Irshad Ahmad Ganai and Tariq Ahmad Bhat, who happen to be the eye witnesses of the occurrence. All these four

witnesses have stated that on the fateful day, the petitioner trespassed into the land possessed by respondent No.2/complainant and thereafter he

started smashing the hut belonging to the respondent No.2/complainant. They have further stated that the petitioner fled away from the spot in a

vehicle which was parked in the aforesaid land.

6) There is also statement of PW-Head Constable Bashir Ahmad of Police Station, Nishat, on record. In his statement he has stated that about five

days prior to 24.09.2014, vehicle bearing No.JK05C-3004 was found lying on the roadside near Nishat Bagh and that he brought the said vehicle to

Police Station, Nishat. A copy of Khasra Girdawari showing respondent No.2/complainant to be in possession of the land which is subject matter of

the challan, is also annexed to the challan.

7) From the foregoing material on record, it appears that the petitioner did trespass into the property of respondent No.2/complainant where he caused

damaged to the hut belonging to respondent No.2. It also appears that the petitioner took away the vehicle which was lying parked in the property of

the petitioner and the same was later on found lying on the roadside near Nishat Bagh wherefrom it was recovered by the police.

8) It has been vehemently contended by learned counsel for the petitioner that the offence of trespass is not made out against the petitioner because

the land, in which the petitioner is alleged to have entered, does not belong to respondent No.2 as it is a State land. The revenue record which is

annexed to the challan shows that the respondent No.2 is in possession of the land where the occurrence is alleged to have taken place. Whether the

land in which the petitioner had entered belongs to respondent No.2 or the same belongs to the petitioner and his partner Prithvi Nath can be

ascertained only after trial of the case and not at the stage of framing of the charges when only the material assembled by the investigating agency

during investigation of the case is required to be taken into consideration.

9) It has also been contended by learned counsel for the petitioner that the vehicle which is alleged to have been stolen by the petitioner does not

belong to respondent No.2 and as per the registration certificate, the same belongs to one Bashir Ahmad Marazi. It is true that as per the registration

certificate, the respondent No.2 is not the registered owner of the vehicle in question but the evidence on record shows that the vehicle in question

was in possession of the respondent No.2 at the time when it was taken away by the petitioner.

10) In order to constitute an offence of theft, it is not necessary that the property which has been taken away by the accused should actually belong to

the person from whose possession it has been taken away. The requirement of law is that the person from whom the property has been taken away

must have possession of the property at the relevant time and the property should have been taken out of his possession without his consent. In the

instant case, the material on record does suggest that the respondent No.2 was in possession of the vehicle in question at the relevant time and the

same was taken away by the petitioner forcibly without his consent. Thus, it is immaterial whether or not the respondent No.2 was the owner of the

vehicle in question. The contention of learned cousin for the petitioner in this regard is without any merit.

11) For the foregoing reasons, I do not find any ground to interfere in the impugned order passed by the learned trial court. The same is, accordingly,

upheld and the petition is dismissed being without any merit. The learned trial court is directed to proceed further in the matter in accordance with the

law.

12) The Registry is directed to sent back the trial court record along with a copy of this order to the learned trial court.