

Sham Lal Vaid - Petitioner @HASH State of J and K and Others

Court: Jammu & Kashmir High Court

Date of Decision: April 26, 2016

Acts Referred: Jammu and Kashmir Criminal Procedure Code, 1989 - Section 561-A
Ranbir Penal Code, 1989 - Section 420, Section 468, Section 471

Citation: (2016) 4 Crimes 563 : (2016) 3 JKJ 315

Hon'ble Judges: Mohammad Yaqoob Mir, J.

Bench: Single Bench

Advocate: Mr. Raghu Mehta, Advocate, for the Petitioner/Appellant(s); M/s Ajay Sharma, AAG and Amarvir Manhas, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Mr. Mohammad Yaqoob Mir, J. - Petitioner seeks quashment of the case registered as FIR No.387/2012 P/S Rajouri for commission of

offences punishable under Sections 420, 468 and 471 RPC. On presentation of this petition in the year 2012, vide order dated 23rd August,

2012, investigation of the case qua the petitioner had been directed to remain stayed. Said direction continues to be in operation, as such,

according to learned AAG, there is no progress in the investigation of the case.

2. Learned counsel for the petitioner contended that, in fact, petitioner and respondent No.2 are entangled into civil litigation. Three civil suits and

two appeals are pending before different Courts. In order to wreak vengeance and to harass the petitioner, respondent No.2 has succeeded in

getting the case registered with the active support of respondent No.3. The respondent No.3, brother-in-law of respondent No.2, at that time was

posted as SDPO/Dy.SP in Thanamandi District Rajouri.

3. A bare perusal of the report as lodged by respondent No.2 would suggest that the respondent No.2 has questioned the position of petitioner

being an adopted son of Kewal Krishan, in the process has tried to create a situation so as to give impression that the petitioner has concocted

various documents.

4. Counsel for respondents highlighted that by filing the instant petition petitioner has succeeded in preventing the investigating agency from reaching

to the depth of the matter.

5. Inherent jurisdiction as vest in the Court under Section 561-A Cr. P. C was not appropriate to be resorted to. The position vis-à-vis exercise of

such power has been settled by the Hon'ble Apex Court i.e. the power has to be exercised sparingly. Even if dispute primarily be of civil nature,

same shall not constitute a ground for quashing the criminal proceedings because forgery and fraud would always be an element of civil nature.

While seeking quashment, the documents relied on by the petitioner (accused) cannot be relied upon except in exceptional circumstances. In

support of this submission, has placed reliance on the judgment of the Hon'ble Apex Court rendered in the case of ""Mahesh Chaudhary v.

State of Rajasthan and another"" reported in (2009) 4 SCC 439.

6. Every case has its own facts and features and law has to be applied accordingly. For exercise of inherent jurisdiction no hard and fast rule has to

be observed. In appropriate cases such jurisdiction has to be exercised so that the innocent are not subject to un-necessary prosecution and

humiliation i.e. in case allegations contained in the first information report, on face value, if taken to be correct, would not make out cognisable

offence or commission of any offence. In short, it is to be ascertained as to whether commission of offence on the basis of first information report is

disclosed or not.

7. The laudable object of Section 561-A Cr. P. C is to prevent abuse of process of the court and to secure the ends of justice. From the above

referred judgment Para 16 will be advantageous to be quoted:

16) Recently in R. Kalyani v. Janak C. Mehta & ors this Court laid down the law in the following terms:

15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information

Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognisable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the

defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go

beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to

continue.

16. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while

exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in view the purport and object for which the

provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by the Parliament but would not hesitate to exercise

its jurisdiction in appropriate cases. One of the paramount duties of the Superior Courts is to see that a person who is apparently innocent is not

subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.

8. In the background of afore-stated position of law, now the question is as to whether the case in hand is an appropriate case warranting

indulgence by invoking powers under Section 561-A Cr. P. C.

9. It shall be quite advantageous to notice the facts and features which have given rise to the registration of the case. Kewal Krishan and Kasturi

Lal were two brothers. Petitioner, son of Kasturi Lal), allegedly was adopted by Kewal Krishan, so has claimed property of his adoptive father

Kewal Krishan. Respondent No.2 has claimed to be the son of Kewal Krishan when according to the petitioner, Kewal Krishan, being a

Government contractor and a permanent resident of Jawahar Nagar Rajouri, frequently used to visit Jammu city for business purposes. In late 70's

he developed relation with one Sarla Vaid who was kept as a mistress and in the process allegedly three illegitimate children, namely, Sanjeev Vaid

(first informant/ complainant), Vishal Vaid and Poonam Vaid were born out of illegitimate relation. According to petitioner, the legally wedded wife

of Kewal Krishan, namely, Smt. Kaushalya Vaid is still alive and is being looked after by the petitioner as her adopted son.

10. Petitioner claims that in his childhood he was adopted by Kewal Krishan, that is how in school records he is recorded as son of Shri Kewal

Krishan Vaid. Supporting this submission, has placed on record date of birth certificate issued by the Headmaster Govt. Boys Middle School,

Jawahar Nagar, Rajouri, wherein petitioner is shown son of Kewal Krishan and his date of birth is recorded as 08.08.1957. Petitioner has also

placed on record another certificate issued by the Jammu & Kashmir State Board of School Education dated 05.06.1985 which reveals petitioner

to be the son of Shri Kewal Krishan and is shown to have passed the Higher Secondary Core Examination held by the Board. In addition, in the

declaration form for obtaining ration as per ration book for the period 1984 to 1986, petitioner is shown as family member of Kewal Krishan,

Election Commission has issued Identity Card in favour of the petitioner in the year 2002 wherein his parentage is shown as Kewal Krishan.

Permanent residence certificate has been issued in favour of the petitioner on 14.07.1984 by the Deputy Commissioner, Rajouri, showing him to

be the adopted son of Kewal Krishan, Subscription Voucher issued by HPCL for LPG connection also reveal the petitioner to be the son of

Kewal Krishan, the Government receipt issued by PHE department for installation of water supply connection also shows petitioner son of Kewal

Krishan. LIC policy taken by the petitioner in the year 1985 also revealed the petitioner to be the son of Kewal Krishan. For obtaining PRC,

Tehsildar recorded statement of Kewal Krishan on 30th June, 1994 wherein he has stated that the petitioner is his son and his wife Suneeta is his

daughter-inlaw and the daughter of Sham Lal Vaid (petitioner herein) is his granddaughter. In addition thereto, a memorandum of family partition

has been executed by, (1) Kewal Krishan Vaid, (2) Rajinder Vaid and (3) Sham Lal Vaid (petitioner herein) on 28th May, 2011.

11. The respondent No.2 along with others has filed a suit for declaration for declaring the ""Memorandum of Family Partition"" as illegal, in-

operative and in-effective as against his rights and the rights of other plaintiffs. In the said suit, petitioner Sham Lal Vaid and his adopted mother,

Koushalya Vaid are arrayed as party/defendants. Said suit is stated to be pending before the Court of Sub Judge(Chief Judicial Magistrate),

Rajouri. Another suit titled Sanjeev Vaid and others v. Kewal Krishan Vaid and others, has also been filed before the same Court wherein

respondent No.2(plaintiff therein along with other plaintiffs) has sought declaration of gift deed dated 20.07.2011, executed by Kewal Krishan

Vaid in favour of his granddaughter Sakshi Vaid, as illegal and void ab initio. At that time in the year 2011, Kewal Krishan was alive so was

arrayed as party/defendant in the said suit. Third suit has been filed by respondent No.2 titled Sanjeev Vaid & Ors v. Kamlesh Chander Sahni &

Ors. seeking specific performance of an oral agreement/contract to sell. In addition, respondent No.2 has also filed two appeals before Deputy

Commissioner, Rajouri against mutation Nos.740 and 746 attested in favour of the petitioner and his adopted mother Kaushalya Devi.

12. It appears that immediately after the death of Kewal Krishan, adoptive father of the petitioner, respondent No.2 has lodged the report based

on which case has been registered as FIR No.387/2012. In the report respondent No.2 has alleged that the petitioner has obtained election

Identity Card dated 15.08.2002, voter list, State subject from Rajouri where his parentage is shown as son of Kewal Krishan Vaid when in reality

petitioner is son of Late Kasturi Lal Vaid, the petitioner was never legally adopted by Kewal Krishan, it is on the basis of wrong information, the

concerned authorities had shown petitioner as son of Kewal Krishan, as such, he has forged the documents. It is further alleged that the petitioner

has managed wrong entry in the voter list, ration card at Jawahar Nagar Rajouri. Petitioner has prepared two ration cards, one at Jawahar Nagar

Rajouri showing himself as son of Kewal Krishan and another at Jammu showing himself to be the son of Kasturi Lal. The sole object of forging

the documents is to grab the property of Kewal Krishan Vaid.

13. Respondent No.2 has earlier filed an application for vacation of interim order wherein he has admitted that the respondent No.3 is his brother-

in-law serving in the Police department and is posted at Thanamandi Rajouri as SDPO/Dy.SP but at the same time has highlighted that he is not

assisting him. It is further contented that the petitioner has failed to produce an adoption deed.

14. The respondent No.1 in the objections has highlighted that the allegation regarding alleged issue of two PRCs, two voter lists, two voter

election cards and two ration cards, one at Rajouri and another at Jammu, is under investigation, therefore, it is for the investigating agency to verify

the facts.

15. Fraud and forgery, no doubt, are offences linked with civil disputes, likewise in connection with civil disputes, if there is any other type of

criminal activity under the garb of pendency of civil disputes, same cannot be said to be outside the purview of police intervention/investigation. In

the instant case, in essence, position of the petitioner being an adopted son of Kewal Krishan is under challenge but the genuineness of the

documents supporting position of the petitioner's adoption is a matter for trial in the civil suits. When the petitioner possesses certificate issued by

the J&K State Board of School Education in the year 1985 showing him to have passed Higher Secondary Core Examination and also showing

him to be the son of Kewal Krishan Vaid, it would suggest that in the school records his parentage has been recorded as Kewal Krishan Vaid, that

too right from the admission stage which dates back to the year approximately 1968. The position of the petitioner having been admitted in the

school with parentage as Kewal Krishan is also supported by the certificate issued by the Headmaster, Govt. Boys High School, Jawahar Nagar

Rajouri. Only one permanent residence certificate has been issued in his favour by the Deputy Commissioner, Rajouri, that too in the year 1983-84

showing petitioner to be the adopted son of Kewal Krishan. Then there is an important document i.e. memorandum of family partition wherein

Kewal Krishan has admitted the petitioner as his adopted son. Further there is again a document i.e. gift deed executed by Kewal Krishan in

favour of daughter of the petitioner. These documents are of such a nature and strength based on which there shall be no scope for police

investigation. These documents have been challenged by medium of above referred suits as are pending before the competent court of civil

jurisdiction.

16. Another important aspect is that the petitioner is alleged to have obtained ration cards and election card showing his parentage as Kasturi Lal

resident of Jammu. How the said two documents would affect the rights of the respondent No.2, if he has any, is not forthcoming. The question of

cheating, in this view of the matter, does not sound well. Whether such a position will fall within the ambit of Section 420, 469 and 471 RPC is not

required to be answered because the said documents have been prepared at Jammu and according to the petitioner that shall be the mischief of

respondent No.2. The occurrence has taken place Jammu, for which case cannot be registered at Rajouri.

17. The case registered at Rajouri is for the acts of omission and commission committed at Rajouri. So far as the position of documents at Rajouri

is concerned, the genuineness of those documents is a matter for trial in the civil suits as have been filed at Rajouri. It appears that the respondent

No.2 has made an extra attempt by lodging a report so as to harass the petitioner. Perusal of the FIR in clear terms is indicative of the fact that the

alleged acts of omission and commission do not fall within the scope of Section 420, 468 or 471 RPC. The position of the petitioner having been

admitted in the school and shown son of Kewal Krishan, then having passed the Higher Secondary Core Examination from the Board of School

Education in the year 1985 wherein again in the school records he is shown as son of Kewal Krishan, leaves little scope for terming other

documents as forged unless, of course, during trial of the suits authenticity of school records is proved otherwise.

18. Keeping in view the background of the case and its peculiar facts and features, in my considered view registration of criminal case appears to

be a handiwork of someone so as to strengthen the position of respondent No.2 for harassing the petitioner. To allow continuation of the criminal

proceedings, as are sought to be quashed, will be sheer abuse of process of the court and will not be in the interests of justice. Therefore, for

securing the ends of justice, I find this case to be an appropriate one in the light of the law laid down by Hon'ble Apex Court to exercise power

under Section 561-A Cr. P. C. Petition, as such, is allowed. Proceedings of the case registered as FIR No.387/2012 P/S Rajouri qua the

petitioner shall stand quashed.

19. The observations made herein above shall remain confined only vis-À-vis quashment of the criminal case and shall not, in any manner, prejudice

the respective rights of the parties while contesting the civil suits as are pending and the learned trial court, while trying the referred civil suits, shall

not get influenced in deciding those cases on their own facts, circumstances and merit.

20. Petition accordingly succeeds so shall stand disposed of along with connected Cr. MPs.

21. Copy of the order be sent to the concerned investigating officer for information and follow up.