

IN THE HIGH COURT OF JAMMU AND KASHMIRAT SRINAGAR

...

**EMG-Crl (M) 66-A/2020
In EMG-CRM (M) 29-A/2020**

(Through Video Conferencing)

Date of Order 28.05.2020

Mohammad Ishaq Atnorkar

.....Petitioner(s)

Through: F. A Wani, adv.

V/s

UT of J& and anr

.....Respondent(s)

Through: Mr. B.A Dar, Sr. AAG

CORAM:

HON'BLE MR JUSTICE ALI MOHAMMAD MAGREY, JUDGE

1. Through the instant petition, petitioner seeks withdrawal of this petition with liberty to file fresh one, in case need arises.
2. For the reasons mentioned coupled with the submissions made at, the EMG-Crl (M) 66-A/2020 is allowed only to the extent of withdrawal of the writ petition filed under section 482 Cr.P.C for seeking quashment of case Crime no. 42 of 2018 pending before the Court of Chief Judicial Magistrate Kulgam, which otherwise shall stand dismissed on the following reasons.
3. Since the quashment of FIR/complaint pending in the aforesaid Court, it is profitable that before going to merits of the case, the question is as to whether the FIR/complaint pending before the Court/authority can be quashed in 482 Cr.P.C proceedings filed in this Court. The answer has to be in the negative, for, the remedy under Section 482 Cr. P. C can be invoked/pressed into service only in the following circumstances:

- “(i) to pass orders in order to give effect to an order passed under Cr.P.C
- (ii) to prevent abuse of process of Court
- (iii) to secure the ends of justice: and
- (iv) to prevent mis-carriage of justice.”

4. Apex Court also held that power is to be exercised cautiously, carefully and sparingly and Court has not to function as a Court of appeal or revision. It has also laid down the parameters and guidelines in cases titled as ***“K.L.E Society & ors v. Siddalingesh reported in 2008 AIR SCW 1993; A.P Vs Bojjoori Kanthaiah reported as 2008 AIR SCW 7860 and Reshma Bano Vs State of Uttar Pradesh reported in 2008 AIR SCW 1998”***.

5. Apex Court in AIR 2004 SC 3967, AIR 1972 SC 484, AIR 1974 SC 1446, AIR 1977 SC 2229, AIR 1989 SC 01, has laid down the same principle. It is apt to reproduce para 10, 13, 14, 15, 17 & 19 out of the judgment titled as Som Mittal Vs Govt. of Karnataka reported in 2008 AIR SCW 1003 herein:

“10. In a catena of decisions this Court has deprecated the interference by the High Court in exercise of its inherent powers under Section 482 of the Code in a routine manner. It has been consistently held that the power under Section 482 must be exercised sparingly with circumspection and in rarest of rare cases. Exercise of inherent power under section 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court under section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

13. In State of Bihar v. J.A.C Saldanha (1980) 1 SCC 554 this Court pointed out at SCC P. 574:

The High Court in exercise of the extraordinary jurisdiction committed a grave error by making observations on seriously disputed questions of facts taking its cue from affidavits which in such a situation would hardly provide any reliable material. In our opinion the High Court was clearly in error in giving the direction virtually amounting to a mandamus to close the case before the investigation is complete. We say no more.

14. In Hazari Lal Gupta v Rameshwar Prasad (1972) 1 SCC 452 this Court at SCC P. 455 pointed out:

In exercising jurisdiction under section 482 of the Criminal Procedure Code, the High Court can quash proceedings if there is no legal evidence or if there is any impediment to the institution or continuance of proceedings but the High Court does not ordinarily inquire as to whether the evidence is reliable or not. Where again, investigation into the circumstances of an alleged cognizable offence is carried on under the provisions of the Criminal Procedure Code, the High Court does not interfere with such investigation because it would then be the impeding investigation and jurisdiction of statutory authorities to exercise power in accordance with the provisions of the Criminal Procedure Code.

15. In Jehan Singh vs Delhi Administration (1974) 4 SCC 522 the application filed by the accused under section 561-A of the old Code for quashing the

investigation was dismissed as being premature and incompetent on the finding that *prima facie* the allegations in the FIR if assumed to be correct, constitute a cognizable offence.

17. In *State of Bihar vs Murad Ali Khan* (1988) 4 SCC 655 this Court held that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

19. We may observe here that despite this Court consistently held in catena of decisions that inherent power of the High Court should not be exercised according to whims and caprice and it has to be exercised sparingly with circumspection and in the rarest of rare cases, we often come across the High Court exercising the inherent power under Section 482 of the Code of Criminal Procedure in a routine manner at its whims and caprice setting at naught the cognizance taken and the FIR lodged at the threshold committing grave miscarriage of justice. While it is true that so long as the inherent power of Section 482 is in the Statute Book, exercise of such power is not imposable but it must be noted that such power has to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power under Section 482 is not intended to scuttle justice at the threshold.”

6. While keeping in view the scope of section 482 Cr.PC the Court should refrain from making *prima facie* decision at interlocutory stage when entire facts of the case are incomplete, hazy and more so, when material evidence is yet to be collected and issues involved could not be seen in their true perspective.

7. In view of the facts and circumstances and law quoted herein above, this petition has no merit, therefore, dismissed alongwith all connected CrIMs.

(Ali Mohammad Magrey)
Judge

Srinagar,
28.05.2020
Ayaz.