

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

...

CRM(M) no.14/2020

Pronounced on: .04.2020

Rubiya Sayed

.....Petitioner(s)

Through: Mr Mir Manzoor, Advocate

Versus

Fida Hussain Fidvi

.....Respondent(s)

Through: MrNisar A. Bhat, Advocate

CORAM: HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

JUDGEMENT

1. Exercise of inherent powers under Section 482 of the Code of Criminal Procedure is sought for by petitioner in petition on hand.
2. Succinctly put, a complaint under Section 499, 500 RPC, has been filed by respondent before the court of 2nd Additional Munsiff, Srinagar (for brevity "*Trial Court*"), which, according to petitioner, is baseless and fictitious.
3. I have heard learned counsel for parties and considered the matter.
4. Learned counsel for petitioner, to cement the case set up by petitioner, has stated that filing of complaint by respondent before Trial Court is aiming at harassing petitioner and allowing criminal proceedings that have emanated from the complaint filed by respondent to continue would amount to sheer abuse of process of court and would not be in the interests of justice. It is vehement submission of counsel for petitioner that complaint is so vague and devoid of material particulars to make out even a prima facie case against petitioner. He has also averred that petitioner is a baseball player and has a right to agitate

corruption and misuse of funds by respondent – Ex. General Secretary of &K Baseball Association before ABFI and before this Court as well. In support of his submissions, learned counsel for petitioner has placed reliance on *G. Sagar Suri v. State of U.P. (2000) 2 SCC 636*.

5. *Per contra*, learned counsel for respondent has insisted that instant petition, in core, seeks exercise of jurisdiction by this Court under Section 482 Cr.P.C., to embark upon the inquiry whether the allegations made in complaint by respondent, are reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations, which are the matters to be examined only by the court concerned after threadbare trial. Learned counsel for cementing his submissions, has relied upon *CBI v. K.M. Sharan, (2008) 4 SCC 471; and Ashok Singh Manhas v. Ajay Gandotra, 2011 (3) JKJ 126 HC*.
6. It would be needless to make mention about the factual matrix of the case inasmuch as the question that falls for consideration is a pure question of law that can be decided without reference to the facts of the case.
7. This Court in terms of Section 482 Cr.P.C. can invoke its inherent jurisdiction to make orders as may be necessary, viz., i) to give effect to any order under this Code; ii) to prevent abuse of the process of Court; and iii) otherwise to secure the ends of justice. While exercising such jurisdiction, this Court would not ordinarily conduct an enquiry with regard to the evidence produced before Court as to whether it is reliable or not or whether it is sufficient for a conviction. At this stage, this Court is bound to consider the prima facie satisfaction of a case.
8. The specific contention of petitioner is that respondent herein has initiated proceedings seeking prosecution against her under Section 499 and 500 IPC with baseless allegations and even if taken on their face value, would not disclose any offence punishable under Section 499 and 500 IPC and that petitioner has made accusation against respondent in good faith which squarely falls under Eighth exception of Section 499 IPC and hence, no ingredients were made out by the

respondent and therefore, the proceedings initiated by Trial Court on the complaint of respondent are liable to be quashed.

9. It may not be out of place to mention here that assuming that the imputations made could be covered by Exception 9 of Section 499 IPC, several questions still remain to be examined – whether such imputations were made in good faith, in what circumstances, with what intention, etcetera. All these can be examined on the basis of evidence in the trial. Having regard to the facts of the present case it must therefore, be said that the proceedings initiated by Trial Court on the complaint of respondent cannot be quashed in exercise of jurisdiction under Section 482 Cr.P.C. In this regard it is pertinent to mention that the Supreme Court in *Mohammed Abdulla Khan Vs. Prakash K, reported in AIR 2017, SC 5608* has said that even if it is presumed that contents of complaint do disclose the facts necessary to establish commission of one or all of offences and where there is sufficient evidence to establish the guilt of alleged accused for any one of the offences, is a matter that can be examined only after recording evidence at the time of trial. That can never be a subject matter of a proceeding under Section 482 Cr.P.C.
10. Now advert to case in hand. Petitioner seeks quashment of complaint filed by respondent as also proceedings initiated therein by Trial Court, on the grounds, submissions and averments made in the petition on hand, which are contentious and need threadbare trial. It is pertinent to mention here that Section 482 Cr.P.C. provides that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such order as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Nevertheless, while exercising powers under Section 482 of the Cr. P.C. the Court has to keep in mind that it should not ordinarily embark upon an enquiry whether evidence in question is reliable or not or whether on a reasonable appreciation of it, the accusation would not be sustained. This is a function of the Trial Court. Though the judicial process should not be an instrument of oppression or needless

harassment but the Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances in consideration before issuing process under Section 482, lest the provisions Section 482 Cr. P.C. become an instrument in the hands of various indifferent persons to claim the differential treatment only because they can spend money to approach higher forums. Section 482 Cr. P.C. is not an instrument handed over to indifferent and unscrupulous persons to short circuit the trial and bring about its sudden end. Having said so, orders impugned need not be interfered with.

11. It is well settled that inherent powers under Section 482 Cr. P.C. because of their plenitude, are to be exercised rarely, sparingly and with due circumspection. The Court, in view of exercise of powers under Section 482 Cr. P.C., is not expected to hijack the trial proceedings pending before the court below and assume its role to sift evidence and find out whether trial should proceed. It is only to prevent abuse of process of court and prevent miscarriage of justice that inherent powers are to be exercised.

12. The powers under Section 482 Cr. P.C. should be exercised very sparingly and with circumspection and that too in rarest of rare cases, has been so observed by the Supreme Court in *State of Haryana vs Ch. Bhajan Lal*, AIR 1992 SC 604. It would be relevant to reproduce paragraph 109 thereof infra:

“We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

13. In *PadalVenkata Rama Reddy vs Kovvuri Satyanarayana Reddy*, (2011) 12 SCC 437, the Supreme Court while relying on the case of *Ch. Bhajan Lal* (supra), has held:

“31.When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That

is the function of the trial Judge. The scope of exercise of power under Section 482 and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in detail in Bhajan Lal (supra). The powers possessed by the High Court under Section 482 are very wide and at the same time the power requires great caution in its exercise. The Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.”

14.The inherent powers cannot naturally be invoked concerning any matter covered by specific provisions of the Code of Criminal Procedure.It is only where the High Court is satisfied either that an order passed under the Code would be rendered ineffective or that the process of any court would be abused or that ends of justice would not be secured, that the High Court can and must exercise its inherent powers under Section482 of the Code. This power can be invoked only in an event when aggrieved party is being unnecessarily harassed. The power under Section 482 Cr.P.C., is not intended to scuttle justice at threshold but to secure justice.

15.Based on the above discourse, the case, projected by petitioner to seek quashment of complaint titled as *Fida Hussain Fidvi v. Rubaiya Sayed* and proceedings initiated against her, does not satisfy the requirement of Section 482 Cr.P.C., the law on the subject and the case law cited hereinabove. Accordingly, this petition is **dismissed** with connected application(s). Interim direction, if any, shall stand vacated.

16.Copy be sent down.

(TashiRabstan)
Judge

Srinagar

.04.2020

Ajaz Ahmad, PS

Whether the order is reportable: Yes/No.