

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

**561-A Cr.P.C no. 149/2009**

**Date of Decision: 23.04.2010**

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**Shabir Ahmad Shah**

**Vs.**

**State & Ors**

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**Coram:**

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**HON'BLE MR. JUSTICE SUNIL HALI, JUDGE.**

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***Appearing Counsel:***

For the Petitioner(s): : Mr. P. N. Bhat, Advocate.

For the Respondent(s) : Mr. J.R. Parihar, AAG.

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|-----|---|---|--------|
| i)  | Whether to be reported in<br>Press, Journal/Media | : | Yes/No |
| ii/ | Whether to be reported in<br>Digest/Journal       | : | Yes/No |
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Petitioner seeks to quash FIR no. 2/2009 registered at Police Station JIC, Jammu under Sections ULA, 120-B and 121 RPC. The allegations contained in the FIR are that, on an information received by JIC, some foreign militants lodged in various jails of Jammu province have been instigated by the petitioner to wage a war against the State of India. On this report having been received, investigation was started and in this connection, Mushtaq Ahmad Lone S/O Ali Mohammad and Imtiyaz Ahmad Dar S/O Abdul Khaliq Dar were subjected to interrogation. In their statements they stated that they were instigated by the petitioner to **fester** the anti national activities.

It is contended by the petitioner that after his detention order was quashed, he was illegally detained in FIR no. 2/2009, which, according to him, was uncalled for and illegal.

I have heard the learned counsel for the parties.

Exercise of power under Section 561-A Cr.P.C in a case is an exception and not a rule. It does not confer any new powers on the Court. It only saves the inherent power which the Court possessed before coming into force of the Code. Three circumstances must exist under which inherent jurisdiction may be exercised. These are :-

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of Court; and
- (iii) to otherwise secure the ends of justice.

Courts have inherent powers apart from expressed provisions of law, which are necessary for proper discharge of law. Inherent jurisdiction under the Section though wide, has to be exercised sparingly when such exercise is justified by the tests specially laid down in the Section itself. Authority of the Court exists for advancement of justice and any attempt made to abuse that authority, Court has the power to prevent such abuse. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. The inherent

powers can be exercised only under three contingencies, namely:-

- (i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
- (ii) Where the allegations in the first information report of complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;
- (iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

Analyzing the facts of this case on the touch stone of the categories mentioned herein above, it be seen that the allegations against the petitioner are that he is stated to have instigated the militants to wage a war against the sovereignty of India. The petitioner's contention is that there is no material on the basis of which this charge could be sustained as such the continuance of the investigation is malicious. His other contention is that after his detention orders were successively quashed by the Court, he is being illegally involved in the offences registered against him.

Whether the material already available would be sufficient for holding the accused guilty, has to be considered at the time of trial. When the information is lodged at a Police Station and FIR is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the

investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

As on today, it has been alleged in the petition that petitioner was initially arrested in the aforementioned FIR, for which a proper bail application was filed before the competent court. The petitioner, however, has not disclosed as to whether he has filed the proper bail application before the learned Chief Judicial Magistrate Udhampur, who had the jurisdiction to entertain such application. Mr. Bhat, learned counsel appearing for the petitioner, states that petitioner was subsequently released in the matter.

The question which arises at this stage is as to whether there is any ground available to quash the FIR and what material has been collected by the investigating agency in this regard. The report of the investigating agency states that after his arrest on 29.08.2009, the petitioner was taken to Medical College Hospital Jammu where he was under medical treatment and his statement could not be recorded. It may thus be pre-mature at this stage to find as to whether the petitioner is actually involved in the case or not.

The investigation is proceeding on the basis of recording the statements of two militants, as such, it will not be proper for

this Court to quash the proceedings at this stage. The material clearly discloses the commission of cognizable offence.

The only grievance of the petitioner seems to be that he will be again arrested in the FIR only to circumvent any order which may be passed by the High Court while quashing his detention under the Public Safety Act. Needless to say that as and when such an eventuality arises, the petitioner can approach the appropriate court for appropriate remedy, in case the investigating officer intends to arrest him. I say so because the petitioner was already arrested and according to Mr. Bhat, he has been released also. Any subsequent arrest in this FIR would be improper unless the investigating officer discloses fresh material, which has been collected against the petitioner during the intervening period.

I, therefore, dismiss this petition with the observations made herein above.

**(SUNIL HALI)**  
**Judge**

JAMMU:  
23. 04.2010  
Anil Raina, Secy.