

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C. No. 256/2011
Cr.M.P No. 287/2011

Date of Decision: 22.02.2012

Ali Akbar & Ors. Vs Rashidan Beghum

Coram:

Mr. Justice J. P. Singh.

Appearing counsel:

For Petitioner(s) : Mr. V.B.Gupta, Advocate.

For Respondent(s) : Mr. P.N.Goja, Advocate.

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| i) | Whether approved for reporting
in Press/Media | : | Yes |
| ii) | Whether to be reported
in Digest/Journal | : | Yes |
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Process issued by learned Judicial Magistrate, Ist Class (Munsiff), Billawar on respondent's Complaint under Sections 451, 323 & 147 RPC against the petitioners is questioned in this Petition on the ground that the Complaint had been filed with malafide intention to grab pathway and pressurize the petitioners to desist from prosecuting Police Challans arising out of FIR Nos. 19/2011 and 28/2010 registered at Police Station, Malhar. The respondent's Complaint is stated false and frivolous, in that, petitioner No.1, aged 96 years, who had lost all faculties of understanding and was otherwise bedridden, could not be believed to have involved himself in the commission of offence(s) indicated in the

Complaint. Involvement of petitioners-Safdar Ali, Din Mohammad and Hassan Din too is stated false in view of the Certificates placed on records showing their presence at their places of posting rather than at the alleged scene of occurrence on the reported date and time.

Learned counsel for the Complainant justified the process issued by the learned Magistrate on respondent's Complaint saying that the facts pleaded by the petitioners, being in nature of their defence, could not be taken into consideration, at this stage, to seek quashing of proceedings initiated on respondent's Complaint. According to the respondent's learned counsel, petitioner-Ali Akbar was not 96 years of age as projected by the petitioners. It was, however, not disputed that the petitioner was in his eighties.

I have considered the submissions of learned counsel for the parties and perused the Statements of respondent-Rashidan Begum and her witness-Sakina Begum recorded by the learned Judicial Magistrate before issuing process against the petitioners.

Perusal of their Statements reveals that rather than disclosing the names of the persons and indicating the role played by each of them individually or collectively in the commission of alleged offence,

the petitioner and her witness Sakina Begum have referred to them by saying that “the accused” had attacked and beat the Complainant with fists and blows.

Such a bald Statement of the Complainant and her witness to the effect that “the accused” had beat her with fists and blows without indicating their names and the role played by each one of them in the occurrence, may not justify issuance of process against seven persons for having formed unlawful assembly when there is not even a whisper in the Statements about forming of unlawful assembly. Mere use of the expression in the Statements like “with common intention” would not be substitute for the facts and circumstances that may indicate forming of Unlawful Assembly.

Issuance of process by a Magistrate on a Complaint has the effect of taking away the freedom affecting the Right to personal liberty of the person(s) proceeded against. The Magistrates empowered to take cognizance on Complaints, are, therefore, required to be vigilant and cautious lest the process issued by them was abused to pressurize and harass the person(s) proceeded against. They are further required to satisfy themselves as to whether or not the

case projected by the Complainant justified issuance of process and if so for what offence and against how many accused, if there were more than one named in the Complaint. This can be achieved if the examination of the Complainant and his witness(es) conducted by the Magistrates themselves or under their supervision, was of a probative nature, carried out to elicit requisite information, by putting such questions in addition to the Statements made by the Complainant and his witness, that may be needed by him to record satisfaction contemplated by Section 204 Cr.P.C as to whether or not the Complaint was justified and if so against whom and for what offence. Recording of the statement in a routine fashion, as it usually so happens and proceeding on what was stated by the Complainant and her witnesses alone, without asking such additional questions that may be required to record requisite satisfaction, may not serve the purpose intended by the provisions of Section 200 Cr.P.C.

The learned Magistrate does not appear to have exercised requisite caution in examining the Complainant and her witness(es) putting them such questions answer whereto would have judicially

enabled him to satisfy as to whether any offence was made out from the Statements of the Complainant and her witness and if so what offence(s) was disclosed and against whom.

The process issued on the Stereotype Statements of the Complainant and her witness that the accused had attacked her, without actually naming them particularly when she is stated illiterate, cannot, therefore, be justified.

For all what has been said above, Order dated 09.07.2011 of the learned Judicial Magistrate, Ist Class (Munsiff), Billawar is, therefore, quashed and the respondent's Complaint remanded to the learned Magistrate for proceeding with it afresh, in accordance with law.

**(J. P. Singh)
Judge**

Jammu:
22.02.2012
Pawan Chopra