

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A No. 256/2010, CrMP No. 284/2010

Dated: 26 .08.2013

Labhu Ram Sehgal v State of J&K and ors.

Coram:

Hon’ble Mr. Justice Bansi Lal Bhat-Judge

Appearing counsel:

For petitioner(s): Mrs. Surinder Kour, Sr. Advocate with
Ms Davinder Preet Kour, Advocate
For respondent(s): Mrs. Z. S. Watali, Dy.AG
SSP Vigilance present in person.

i)	Whether to be reported in Press/Journal/Media	Yes/no
ii)	Whether to be reported in Digest /Journal	Yes/no

This petition filed under Section 561-A Cr.P.C seeking quashment of FIR No. 44/2010 dated 09.10.2010 registered with Police Station Kalakote alleging commission of offence under Sections 376/109 RPC rests on the grounds that the petitioner a Journalist, social worker, political activist pursuing law course in Dogra Law College, Jammu has been falsely implicated in the aforesaid case on the ground of a fight against the corrupt officials. It is alleged, that on 05.10.2010 respondent no. 10 approached respondent no. 8 for redressal of her grievances, where she was raped, first by respondent no. 9 and then by

respondent no. 8. It is further alleged that a nude movie was taken to black mail respondent no. 10. It is further alleged that respondent no. 10 threatened to implicate the petitioner in a false rape case, which compelled the petitioner to file a complaint under Section 107 Cr.P.C before Tehsildar, Executive Magistrate Ist Class Jammu. It is further alleged that respondent no. 10 was raped at her home by some persons during the night intervening between 7 / 8th October, 2010. When she approached respondent no. 8 for taking action, she was forced to implicate the petitioner on the basis of the nude-movie and forced to implicate the petitioner in false charges of rape. Thus, it is contended that respondent no. 10 has falsely implicated the petitioner and her statement under Section 164-A Cr.P.C recorded before the Magistrate was a result of her being a victim of blackmail in the hands of respondent nos. 8 and 9. Status report has been filed by the respondents, perusal whereof reveals that respondent no. 10 had alleged gang-rape leading to registration of case under FIR No. 44 of 2010 for commission of offence under Section 376 RPC. Investigation was carried out by respondent no. 9 and final report had been submitted before the competent Court. Respondent no. 10 approached learned Special Judge, Anti Corruption, Jammu alleging that SHO Bashir Khan and SI Mattu Khan of Police Station Kalakote raped her and also demanded and accepted bribe amount of Rs. 10,000/- from her. While the rape allegation against the police officials was being verified by the office

of Inspector General of Police, Jammu, investigation in FIR no. 44/2010 established the complicity of four accused including the present petitioner- Labhu Ram Sehgal and charge sheet had been produced before the competent Court. As the petitioner was absconding since the date of alleged occurrence, Court has been requested to initiate proceedings under Section 512 Cr.P.C. However, during inquiry against the allegations of rape and bribe, respondent no. 10 stated that she was forced to implicate the present petitioner as accused in the rape case by SHO Kalakote-Bashir Khan and SI Mattu Khan even though he was not among the persons who raped her.

In the 2nd status report, it is submitted that present petitioner is a history sheeter in the record of Police Station Kalakote. Besides this, he is also involved in cases under FIR No. 65/2006 of Police Station Kalakote registered for offence under Sections 468, 471, 420 RPC and in FIR no. 13/2010 of Police Station Nowabad registered for offence under Sections 467, 468, 472, 420 RPC. As per this report, the inquiry revealed that the present petitioner was using respondent no. 10 against police officials who challaned him for commission of rape.

Heard rival sides and perused the record.

It appears that case under FIR No. 44/2010 was registered on the basis of a complaint lodged by respondent no. 10 before learned Chief Judicial Magistrate Rajouri

alleging rape at the hands of the accused including the present petitioner. The case was registered on the directions of learned Chief Judicial Magistrate passed under Section 156

(3) Cr.P.C. Present petitioner was specifically nominated as one of the rapists. In the statement recorded under Section 164-A Cr.P.C respondent no. 10 implicated the accused including the present petitioner in the allegations of gang-rape.

Investigation in the case has been concluded and charge sheet stands filed before the competent Court. Investigating agency is reported to have prayed for initiation of proceedings under Section 512 Cr.P.C against the present petitioner who is reportedly absconding. From the latest report it is gathered that after filing of charge sheet in FIR No.44/2010 present petitioner has prevailed upon respondent no. 10, exploited and used her as a tool against investigating officers and further dominated her will to retract charge of gang-rape as against the petitioner. This has surfaced during the inquiry into charges of allegations of rape and bribery against the police officials who investigated the rape case.

The determination of guilt or innocence in case lodged under FIR 44/2010 being a matter of trial and any version in derogation of the allegations in the charge sheet and running parallel to report filed under Section 173 Cr.P.C, wholly or in part, cannot be taken into consideration in these proceedings for quashing of the FIR which is specific regarding the role attributed to the present petitioner as a rapist and supported by material assembled

during the investigation of the case. Like wise, the plea raised by the learned counsel for the petitioner that the petitioner was an impotent person incapable of having sex with a woman, consensual or otherwise, is of no help in these proceedings. The plea may at the best be a possible defence of petitioner at the trial of charge of rape/gang-rape and upholding of the same would depend upon discharge of burden of proof. In my considered opinion it is not a fit case for involving inherent powers of this Court for quashing of the FIR, allegations wherein stand substantiated by material assembled during the investigation culminating in filing of charge sheet before the competent Court.

I find no merit in this petition, same is dismissed.

Trial Court be informed accordingly.

(Bansi Lal Bhat)

Judge

Jammu

26 .08.2013.

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