

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CRMC No. 65/2011

Date of decision: 31.07.2018

Aurangzeb

vs.

State of J&K and others

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal, Judge

Appearance:

For petitioner/appellant(s) : Mr. D. C. Raina, Sr. Advocate with
Mr. Anuj Dewan Raina, Advocate

For applicant/respondent (s) : Mr. S. S. Nanda, Sr. AAG

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|------|----------------------------------------------------|--------|
| (i) | Whether to be reported in
Press, Journal/Media: | Yes/No |
| (ii) | Whether to be reported in
Journal/Digest: | Yes/No |
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1. This petition under section 561-A Cr.P.C. seeks quashing of FIR No. 217/2010 of Police Station, Akhnoor under sections 420,199 and 200 RPC and order dated 25.02.2011, whereby in the charge-sheet arising in the impugned FIR, learned trial Magistrate has framed charge under sections 420, 199 and 200 RPC against the petitioner.
2. Heard learned counsel for the petitioner and perused the record.
3. Accusation against the petitioner (accused) is that he obtained a Permanent Resident Certificate (PRC) vide No. SDM/AKH/PRC/09-10/207 dated 21.12.2009 from the SDM, Akhnoor by concealing the fact that similar certificate had earlier been issued in his favour in file No. 480/PRC/1996-97 dated 21.12.1996.
4. The bottom line of the submissions made by learned Senior Advocate, Mr. D. C. Raina, appearing on behalf of the petitioner was that prosecution of the petitioner on the basis of the charge-sheet filed by the Police is barred under

section 7 of the Jammu and Kashmir Grant of Permanent Resident Certificate (Procedure) Act, 1963 (for short the Act) as no court can take cognizance of the offence punishable under the Act, otherwise than on a complaint made by the public servant with the previous sanction of the Revenue Minister. The argument of learned Senior Advocate was that offence, if any, committed by the petitioner is covered under section 7 of the Act for which prosecution could have been launched by the concerned officer, that is, the officer before whom, the concealment of fact was allegedly made by the petitioner, that too with previous sanction of the Revenue Minister.

5. The submission made by learned Senior Advocate though in tune with section 7 of the Act, would, however, not apply for the reason that the FIR was registered for offence under section 420 RPC and the petitioner is being tried for commission of offences under sections 199 and 200 RPC, besides offence under section 420 RPC and not for offence under section 7 of the Act. The contention of learned Senior Advocate would have prevailed had the prosecution been for commission of offence under section 7 of the Act as cognizance for the said offence can be taken only on a complaint made by the concerned public servant with previous sanction of the Revenue Minister and not on a charge-sheet filed by the police.
6. The other leg of submissions made by learned Senior Advocate was that, whereas no *prima facie* offence under section 420 RPC is made out, the prosecution for offences under sections 199 and 200 RPC on the basis of the impugned FIR and the charge-sheet arising therein is illegal as the said two offences are non-cognizable offences.
7. Given the nature of accusation that the petitioner obtained PRC dated 21.12.2009 by concealing the fact that similar certificate had earlier been

issued in his favour in the year, 1996, I am inclined to agree with the submission of petitioner's counsel that it does not constitute commission of offence under section 420 RPC. The alleged act of the petitioner indeed is *prima facie* covered under sections 199 read with section 200 RPC, besides section 7 of the Act.

8. There being a *prima facie* case of commission of offence under section 7 of the Act, in the matter of launching prosecution against the petitioner, the concerned authority, that is, SDM Akhnoor, was required to proceed under the Act itself by filing complaint in terms of the section 7. The letter dated 27.09.2010 written by the SDM, Akhnoor to Deputy Commissioner, Jammu (annexure-A), on the basis whereof FIR was registered by the Police, would show as if the SDM had avoided to file the complaint in terms of section 7 and had rather requested the Deputy Commissioner to recommend cancellation of the subsequent PRC dated 21.12.2009 issued in favor of the petitioner. Nonetheless, the SDM endorsed a copy of this letter to the SHO Police Station, Akhnoor with a direction to proceed under law against the defaulter. The appropriate criminal action under law would have been a complaint under section 7 of the Act to be filed by the SDM himself but the SHO erred in law by registering the FIR under section 420 RPC as no offence under section 420 RPC was *prima facie* constituted.
9. As said above, besides section 7 of the Act, the alleged act of the petitioner *prima facie* constituted commission of offence under section 199 read with 200 RPC. As per the second Schedule to the Code of Criminal Procedure read with section 2(d) and (j) thereof the offences under sections 199 and 200 RPC are non-cognizable offences so neither the FIR for commission of said offences could have been registered by the police nor prosecution on the basis of said FIR could have been launched by the police. The registration of

the FIR and the launching of the prosecution by the police are, therefore, illegal and are vitiated.

10. Continuation of trial on the basis of illegal FIR and the charge-sheet cannot be permitted and calls for indulgence of this Court under section 561-A Cr.P.C.
11. Viewed thus, this petition has merit and is therefore, allowed. Prosecution of the petitioner arising in FIR No. 217/2010 of Police Station, Akhnoor is quashed.

(Janak Raj Kotwal)
Judge

Jammu:
31.07.2018
Rakesh

