

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

Pet. u/s 561-A No.176/2017

Date of decision: 28.06.2018

Farooq Ahmad Dar vs. State of J&K and others

Coram:

Hon'ble Mr. Justice M. K. Hanjura, Judge

Appearance:

For petitioner (s) : Mr. M. Y. Bhat, Advocate.

For Respondent(s) : Mr. B. A. Dar, Sr. AAG.

- | | | | |
|-----|---|---|-----|
| i) | Whether to be reported in
Press Media | : | Yes |
| ii) | Whether to be reported in
Digest/Journal | : | Yes |
-

- 1) In this petition, filed under Section 561-A of the Code of Criminal Procedure, the petitioner craves the indulgence of this Court in quashing the FIR bearing No.22/2017 registered against him and others on 25.07.2017 by the Station House Officer, Police Station Crime Branch Kashmir, for the commission of offences under Sections 120-B & 409 of the Ranbir Penal Code read with Section 5(2) of the Prevention of Corruption Act.
- 2) Before looking into the areas of concern projected by the petitioner in this petition, the contents of the FIR require to be examined and evaluated. The FIR delineates that on 25.07.2017 the authorities of Crime Branch Kashmir received a communication No.47/GAZ/Civ/PHQ/2017-6791-93 dated 17.07.2017 from PHQ, J&K Srinagar, through CHQ, J&K Srinagar vide letter No.CHQ/Est/K-460/18/10738-39 dated 24.07.2017, running under the head "Complaint regarding abuse of official position by the officers of Armed Police, J&K to confer undue benefit", the details of which are that the matter

pertaining to lending of Government premises to a private person for running eatery (food point) allegedly under the so called PPP mode both at Srinagar and Jammu by Armed Police, came under discussion in the Police Headquarters. It has been stated that the perusal of records in this behalf inter-alia reveals that the officers/officials of JKAP 9th Bn. having domain in the capacity of public servants over the property of Lake View, Golf Course-cum-Police Environment and Training Park, Boulevard, Srinagar, have under a well designed criminal conspiracy under the garb of a joint venture rented out the above said property to Hotel Mughal Darbar through its Managing Director, Mr. Farooq Ahmad Dar S/o Mr. Habib-ullah Dar R/o Banderpora Anantnag. The public servants have illegally and dishonestly by abuse of their official position executed an illegal agreement in respect of the above said property in his favour on 19th of May, 2014. The agreement has been executed by officers/officials despite having knowledge that the property belongs to the Government and has been entrusted to them in the capacity of public servants, having no authority/competence to rent out the same without the proper approval of the competent authority that is the Government. Similarly, what gets revealed further is that the officers/officials of IRP 10th Bn having domain over the property of the Government situated at Police Departmental Store, Gulshan Ground, Jammu, have under a well designed criminal conspiracy under the garb of a joint venture rented out some property to Hotel Mughal Darbar through its proprietor, Mr. Farooq Ahmad Dar by executing into writing an illegal agreement dated 14th March, 2014 for jointly operating and managing a restaurant over the premises of the Police Departmental Store, Jammu, under the name and style of M/S Flavours of Kashmir and dishonestly allotted/rented the Govt. land/property to the beneficiary Farooq Ahmad Dar to confer undue benefit upon themselves and the beneficiary. In both the agreements entered into by the respective Commandants of JKAP 9th Bn and IRP 10th Bn, the terms and conditions of the agreements have been structured in such a manner so as to cause undue

benefit upon the proprietor of Hotel Mughal Darbar. The correspondence made in this regard by the Armed Police Headquarters reveals that instead of taking the matter/s with the competent authority, i.e., the Government, the subordinate units have been directed to proceed further after observing all necessary codal formalities/financial implications. The acts omitted and committed on behalf of the officials of Armed Police Headquarters and public servants/officers of JKAP 9th Bn and IRP 10th Bn. prima facie constitute the commission of offences punishable under Section 120-B, 409 RPC read with Section 5(2) of the Prevention of Corruption Act Samvat 2006 and warrant cognizance. Since the occurrences are distinct, i.e., one at Jammu and the other at Srinagar as such these avouch the registration of separate cases. In view of above, it has been requested in the communication that formal cases into the allegations be registered under relevant provisions of law. It has been further mentioned that accordingly CHQ J&K, Srinagar, vide its above referred letter directed the Crime Branch, Kashmir, to register a formal FIR in respect of the allegations that pertain to the jurisdiction of Crime Branch Kashmir. In view of the aforesaid directions of PHQ, J&K Srinagar, and CHQ, J&K Srinagar, a case bearing FIR No.22/2017 for the commission of offence under Sections 409, 120-B of the RPC read with Section 5(2) of the Prevention of Corruption Act, is registered at Police Station Crime Branch, Kashmir, with regard to the lending of the Government property situated at Lake View Golf Course-cum-Public Environment & Training Park, Boulevard and the investigation of the said case is entrusted to Sh. Farhat Jeelani, Dy. SP of Crime Branch, Kashmir.

- 3) Aggrieved by the registration of the aforesaid FIR the petitioner has challenged its vires on the grounds inter alia that the respondents entered into an agreement with him for running a restaurant/canteen for a period of 15 years which would thereafter automatically be renewed for another 15 years. The restaurant was being run peacefully by the petitioner in accordance with

the provisions of the agreement. The respondents thereafter in violation of the aforesaid agreement harassed the canteen staff and were not allowing them to run the business peacefully. The Police authorities started raising false allegations against the petitioner so that his image is tarnished in the eye of the public at large. It was because of these malafide intentions and vested interests that this action was taken against him by some of the officers of the Police Department and accordingly, both the restaurants were closed. The petitioner, therefore, constrained by the circumstances filed a writ petition before this Court being OWP No.1482/2016, in which Mr. L.T. Mohanti filed his reply claiming therein that the allotment made is against the law and the rules and, therefore, the petitioner closed down the said restaurant. The reply filed by the officer disclosed that the writ petitioner had at the very inception applied before the competent authority who had directed the Commandant concerned to proceed further after observing all necessary codal formalities/financial implications. In his reply he alleged that the then Commandant did not observe the codal formalities as he did not float the tenders which was a breach of the instructions circulated by APHQ. It was further pleaded that ADGP Armed was not the competent authority to allot the premises.

- 4) The Court on consideration of the said reply filed by the said officer decided the writ petition being OWP No.1482/2016 on 24.05.2017 by directing the respondents to take a sympathetic view so that the petitioner is not made to suffer any further. The order further directed the DGP to pass appropriate orders keeping in mind that the petitioner has made huge investment and was operating the restaurant for the last two years and the refusal on their part may have civil consequences of claiming damages. So far as the restaurant at Jammu is concerned the cancellation of agreement dated 11.08.2014 was called in question under Section 9 of the Arbitration and Conciliation Act and the same was stayed by the Principal District Judge, Jammu, vide order dated 26.08.2014. In the said litigation at Jammu as well as at Srinagar the only

disclosure made by the respondents is that the joint venture agreements have been executed without inviting any tenders and without seeking the approval of the Government. It was because of that reason that the petitioner was asked to close down the said restaurant despite the fact that he had made huge investments and had raised a huge loan from the financial institutions.

- 5) It is further stated that the alleged commission of offence has taken place in the year 2014 when the Joint Venture Agreements were executed by the Police Department with the petitioner and since then the said agreements were acted upon continuously by both the parties. Therefore, the respondent Police Department was not only cognizant of the said transaction but was also conscious of the execution of these agreements and reaped and derived the benefits out of these contracts. After the execution of the contract the petitioner deposited some amount also with the Police Department which they received gladly in the shape of three cheques as a token of share out of the profits before the floods that inundated the valley of Kashmir in the year (September) 2014. In the ligation before the Hon'ble High Court at Srinagar as well as at Jammu the respondents all along pleaded that the competent authority has not accorded approval to the said agreement and tenders were not floated. There was no allegation of the commission of any offence in the said deal. It is only after the judgment was delivered by this Court and on the transfer of Shri S.M. Sahai that the FIR was registered which is swaddled in malafide intentions and vested interests. The registration of the FIR in the matter is not only motivated but is a calculated move devised to take revenge under a well knit design and is as such liable to be struck down on that count.
- 6) The alleged occurrence although not admitted has taken place in the year 2014 and FIR has been registered after a period of more than three years. In the peculiar circumstances of the case the respondents cannot claim that they have no knowledge of the deal. Therefore on this ground also the FIR is liable to be quashed by this Court. The bare perusal of the FIR reveals that it does

not disclose the commission of any offence. The FIR has been registered on the allegations of an irregularity and illegality committed in granting contracts. The accusation levelled is that the officers who allotted the contracts had no competence to do so without the proper approval of the Government, though on facts the said allegations are baseless. No case is made out against the accused persons and the FIR is liable to be quashed on this score as well.

- 7) The ingredients of the alleged offences levelled against the accused are not made out in the case. The letter written by the then ADGP Armed dated 27.08.2014 clearly shows that he had asked the authorities to make arrangements on the same pattern as were evolved in the case of other canteens. A copy of the same has been at that point of time forwarded to DGP J&K also and is attached to the petition as Annexure “F”. It is evident that five fuel care pumps have been established in District Jammu, Kathua, Rajouri, Poonch and R.S.Pora and the said fuel care pumps have been allotted to private persons/authorities without inviting any tenders. In terms of canteen Rules, the commandant concerned is the Chairman of the committee and it was not within the domain and power of the petitioner to interfere in the internal affairs of the Police Department and the formalities required to have been complied by them in the matter of the execution of the agreement with him. Therefore, the question of committing any offence does not arise at all. By registering the FIR the respondents have tried to kill two birds with one stone. First, to scuttle the implementation of the judgment of the High Court and to ensure that the accord of consideration to the same is veiled and nailed down and secondly, that senior officers of the Police Department are involved in a row under one or the other pretext. The respondents have abused their official position in lodging the FIR and, therefore, the same is liable to be quashed by this Court.
- 8) The respondents have resisted and controverted the petition of the petitioner on the grounds that the quintessence of a free, fair and impartial investigation of a criminal case is to give a free hand to the investigating agency.

Manoeuvring by the petitioner so as to strangle the investigation at the very inception is not countenanced under the law. The delay, if any, has been procedural and unintentional. The case was registered after a thorough scrutiny of records and on ascertaining the real facts. The matter pertaining to lending of Government property to a private person under a so called joint venture agreement came under discussion at PHQ and the perusal of the records in that behalf revealed, inter-alia, that the officers/officials of the JKAP having dominion over the property, in the capacity of public servants, have under a well designed criminal conspiracy and by abuse of their official position illegally rented out the said property to the present petitioner with the intention to confer undue benefit upon themselves and the beneficiary, i.e., the petitioner. These acts of omission and commission, prima facie constitute the commission of offences under Sections 120-B, 409 RPC read with Section 5(2) of the Prevention of Corruption Act, requiring thorough investigation. The impugned FIR was lodged at Police Station Crime Branch, Kashmir, on 25.07.2017 under the relevant Sections of law against the officers/officials of the Armed Police and the petitioner.

- 9) The Apex Court of the Country in several land mark judgments has reiterated that the power of the Court under Section 561-A to quash FIR or the proceedings emanating there from should be exercised very sparingly and that too in the rarest of the rare cases. At the initial stage of the investigation, where the FIR discloses the commission of the cognizable offences, the Court cannot assess and appreciate the evidence like a trial Court/Appellate Court and cannot make a roving enquiry relating to the reliability of the evidence and the sustainability of the accusations made in the FIR. In the present case, the FIR reveals a case of the abuse of official position under a well conspired plan resulting into the execution of an illegal agreement in respect of the Government property having the effect of conferring undue benefit upon the beneficiary and the accused public servants at the cost of public exchequer. The FIR cannot be quashed and investigation cannot be thwarted at the very

inception considering the seriousness of the allegations contained in the FIR. It is not a case where this Court may like to exercise its inherent power under Section 561-A of the Code of Criminal Procedure to quash the FIR and to stop investigation, which otherwise also could not be carried forward due to the stay on investigation obtained by the petitioner from this Court in the instant petition vide interim order dated 01.08.2017 immediately after lodging the impugned FIR on 25.07.2017. In the end, it has been prayed that the petition be dismissed so as to enable the respondents to conduct a free, fair and impartial investigation and conclude the same on merits.

10) Heard and considered.

11) The law is that in exercise of the wholesome power vested in the High Court under Section 482 of the Criminal Procedure Code corresponding to Section 561 of the J&K Criminal Procedure Code, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to the laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and the purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and the contours of that salient jurisdiction.

12) In the law laid down by the Supreme Court in the case of State of Haryana and others v. Bhajan Lal and others, reported in 1992 Supp (1) SCC 335, the Supreme Court has elaborately considered the scope of Section 482 Cr. P.C. In this case the Supreme Court had the occasion to determine the extent and power of the High Court to quash the entire criminal proceeding including the FIR. The case arose out of an FIR registered under Sections 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947. After noticing the earlier pronouncements on the subject, the Supreme Court detailed with lace certain categories of cases by way of illustration where power under Section 482 of the Cr. P.C. can be exercised to prevent the abuse of the process of the Court or secure the ends of justice. Paragraph 102 of the judgment provides seven categories of cases where the provisions of Section 482 Cr. P.C. can be invoked and these are extracted below:

- “i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

- iv) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- vi) Where there is an express legal bar engrafted in any of the provisions of the code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13) Testing the instant case on the standards of the guidelines evolved in the law laid down above, what requires to be probed and looked into, herein, is whether the criminal proceedings initiated against the accused are manifestly attended with malafides and devised to wreck vengeance on the petitioner. The petitioner after his eviction from the running eatery (food point) which was allotted in his favour on 19.05.2014 in furtherance of a Joint Venture Agreement filed a petition before this court against the respondent state being

OWP No.1482/2016 connected with MP No.01/2016 bearing the title *Hotel Mughal Darbar Pvt. Ltd. Vs. State of JK & others*. The said petition came to be decided and determined by an order dated 24th May, 2017, the relevant extracts of which are reproduced herein below verbatim:-

“Petitioner claims to have invested huge amount of money as such was running the said restaurant from the year 2014 till December 2016. Thereafter, he has been asked to vacate in violation of the Joint Venture Agreement providing for carrying out the business for a period of 15 years. Aggrieved by such action has filed instant petition with the following prayer:-

‘That by issuance of writ of prohibition the respondents be restrained from interfering in the peaceful possession and business of the petitioner being carried at Lake View Golf Course Cum Police Environment and Training Park Boulevard Srinagar, under the name and style of M/s Flavours of Kashmir.

By issuance of a writ of mandamus the respondent be directed to comply faithfully in letter and spirit with Agreement dated 19.05.2014, and abide by all conditions laid down therein, specially Clause 22 of the Agreement and thus allow the petitioner to peacefully carry on his business as mentioned above, as same shall be in the interest of justice.’

Respondents in their objections have stated that Commandant JKAP-9th BN was not competent authority nor had obtained any sanction from the competent authority for being party to the Joint Venture Agreement, no doubt Commandant JKAP-9th BN has submitted the proposal to Armed Police Headquarters and then ADGP armed police vide Letter No.13203 dated 22.04.2014 had advised the Commandant as under:

“Please proceed further after observing all necessary codol formalities/financial implications.”

In para 5 of the reply, it has been made clear that the petitioner was running/operating a restaurant illegally without any sanction or approval from the competent authority, as such, was asked to vacate which he has amicably done without any use of force/harassment, as such, has vacated. It is further stated that the Joint Venture Agreement is void ab initio, in view of the fact that Commandant JKAP-9th BN was not competent authority to execute the same.

Learned counsel for the petitioner submits that as per the rules prescribed Commandant JKAP 9th Bn. Zewan. Srinagar is the Chairman, therefore, was competent to execute Joint Venture Agreement.

While considering the rival submissions, it appears that the petitioner in pursuance to Joint Venture Agreement has invested huge amount and thereafter was operating the restaurant for two long years without any objection from respondents. In the month of December, 2016, he has been asked to vacate, which he has.

The question for determination is as to whether Joint venture agreement can be declared void ab initio by the respondent authority.

Without going into the said question, it would be quite appropriate in the larger interest of justice to direct Director General of Police, J&K, Srinagar, i.e. respondent no.2 to look into the grievances of the petitioner and then to pass appropriate orders as shall be warranted under law. DGP shall take into account the whole gamut of the case coupled with the fact of huge investment made by the petitioner in operating the restaurant for last two years, which fact is not denied. Refusal of respondents to allow the petitioner to run the canteen may have its civil consequences including claim for damages. It being so, the exercise in the aforesaid circumstances shall be undertaken and

finalized within a period of eight weeks from the date copy of this order is served upon respondents. Right is reserved to the petitioner to re-agitate subject to survival of cause.”

- 14) The respondents, the protectors of the life and limb of the citizens of the State and the ace champions of the law and justice instead of complying with the mandate of the judgment/order detailed above that directed the respondent No.2 i.e., Director General of Police, J&K Government, to look into the grievances of the petitioner and to pass an appropriate order as warranted under law taking into account the entire case coupled with the fact that the petitioner has made huge investment in operating the restaurant for the last two years, which fact is not denied by the respondents flouted this order with impunity. The order also directed that the refusal of the respondents to allow the petitioner to run the canteen may have civil consequences including the claim for damages. The order also stated that the entire process shall be undertaken and finalized within a period of eight weeks from the date the copy of the order is served upon the respondents.
- 15) The respondents did not pass any order in tune and in line with the aforesaid judgment. They did not settle or circle out the grievances of the petitioner. They frustrated the judgment passed by the Writ court by registering an FIR against the petitioner and others on the 25th July, 2017 i.e. after an approximate period of two months and two days from the date of the passing of the order aforesaid. The respondents in registering the FIR against the petitioner did not even have scant and subtle respect for the order dated 24.05.2017 passed by this Court. The respondents gave a complete goby to the said order. They failed to abide by its terms and instead of seeking its compliance devised ways and means to wreak vengeance against the petitioner by registering a case against him and in doing so they succeeded in hoodwinking the process of law.
- 16) Testing the instant case from another perspective the petitioner executed a Joint Venture Agreement with the Head Quarters Armed Police Batmaloo Srinagar J&K through its Commandant JKAP-9th BN Zewan (Srinagar) and

the terms and conditions of the agreement provided that the Joint Venture shall remain effective for a period of 15 years from the date of operation of the restaurant and the same shall automatically be renewed for an equal period at the existing terms and conditions and the modifications thereof in future. It also provided that in the event of any dispute or difference at any time arising between the parties in respect of anything arising out of or incidental thereto, such dispute or difference shall be submitted for arbitration to a panel of two Arbitrators, one each to be appointed by the First Party and the Second Party at Jammu, under the provisions of J&K Arbitration Act, or any statutory enactment thereof for the time being in force.

- 17) On the face of this arbitration clause and the agreement entered into by the parties what can be inferred is that the registration of the FIR against the petitioner is totally unwarranted, unjust and against the law for the elementary reason that the case has a civil lineage and it involves a civil dispute. It had to be referred to an Arbitrator for an effective adjudication in terms of the conditions incorporated in the agreement. Therefore, on the analogy of what has been stated above, even if the allegations made in the FIR are taken at their face value and accepted in their entirety, these do not constitute an offence or make out a case against the accused. Respondents in pursuing their claim had to knock at the doors of the civil Court or to refer the matter to arbitration. They cannot set the criminal law into motion in implicating the petitioner for the commission of the offences for which the FIR has been registered against him. In “**Joseph Salavaraj Vs. State of Gujrat & Ors.**” reported in “**2011 7 SCC 59**”, the Supreme Court has viewed that a purely civil dispute can be given a colour of a criminal offence to wreak the vengeance against the applicant and it is necessary to draw a distinction between a civil wrong and a criminal one and the applicant cannot be allowed to go through the rigmarole of a criminal prosecution for a long number of years, even when admittedly a civil suit has been filed.

18) In terms of the settled legal position evolved in the case of **C. K. Jaffer Sharief vs. State, (2013) 1 SCC____**, the Apex court of the Country laid down that no official can be booked for the commission of criminal misconduct on the allegation of any illegality committed in absence of any concrete material showing the deal of bribe or embezzlement. In the present case, a mere allegation of illegality is levelled which in no case amounts to the commission of the offences under which the FIR has been registered as is settled by Hon'ble Supreme Court. The relevant paras of the relevant judgment are reproduced below, word for word, and letter for letter:-

- 15) **A fundamental principle of criminal jurisprudence with regard to the liability of an accused which may have application to present case is to be found in the work Criminal Law by K. D. Gaur. The relevant passé from the above work may be extracted below:-**

“Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively.”

- 16) **It has already been noticed that the appellant besides working as the Minister of Railways was the head of the two public sector undertakings in question at the relevant time. It also appears from the materials on record that the four persons while in London had assistant the appellant in performing certain tasks connected with the discharge of duties as a Minister. It is difficult to visualize as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons. If the statements of the witnesses examined under Section 161 Cr.P.C. shows that the aforesaid four persons had performed certain tasks to assist the Minister in the discharge of his public duties, however, insignificant such tasks may have been, no question of obtaining an pecuniary advantage by any corrupt or illegal means or by abuse of the position of the appellant as a public service can arise. As a Minister it was for the appellant**

to decide on the number and identity of the officials and supporting staff who should accompany him to London if it was anticipated the --- he would be required to perform his official duties while in London. If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundancy, it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e., corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in *M. Narayanan Nambiar vs. State of Kerala* while considering the provisions of Section 5 of the 1947 Act.”

- 19) Applying the ratio of the law laid down above to the facts of the instant case the respondents did not make even a murmur before the writ Court, that dealt with the writ petition, of the petitioner, to state that the petitioner and others entered into any deal involving bribe or embezzlement and they cannot be heard saying so after a period of more than three years from the date of the execution of the agreement as the FIR has been registered more than three years after the execution of the agreement.
- 20) Looking at the instant case from yet another angle, the law laid down in the case of **“Priyanka Srivastava & Anr. Versus State of U.P. & Ors.”** reported in **2015 (2) Crimes 209** is germane in the context of the decision of the instant case and the relevant excerpts thereof that have a direct impact and bearing on the subject matter of the controversy are reproduced below verbatim et literatim:-

"115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint."

After so stating the constitution Bench proceeded to state that where a preliminary enquiry is necessary, it is not for the purpose for verification or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. After laying down so, the larger Bench proceeded to state:-

"120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:-

- (a) Matrimonial disputes/family disputes**
- (b) Commercial offences**
- (c) Medical negligence cases**
- (d) Corruption cases**
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.**

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry." We have referred to the aforesaid pronouncement for the purpose that on certain circumstances the police is also required to hold a preliminary enquiry whether any cognizable offence is made out or not. "

18) Para 115 cited above countenances that, there may be instances where preliminary inquiry is the need of the hour owing to the change in the novelty of the crime with the passage of time. It lays down that one such instance is a case where allegations leveled relate to the charge of corruption where it will be unfair to prosecute an accused only on the basis of allegations in the complaint. It further states at para 120.6 that in addition to the above, the category of cases in which the preliminary inquiry may be made, are matrimonial disputes/family disputes, commercial offence, and cases where there is abnormal delay/laches in initiating criminal prosecution i.e. over three months" delay in reporting the matter without satisfactorily explaining the reasons of delay. It also provides that these are only illustrations and not an exhaustive list of the cases that may warrant a preliminary enquiry."

- 21) Testing the instant case on the touchstone of the above, it was on 25.07.2017 that the authorities of Police Station Crime Branch Kashmir registered an FIR against the petitioner and others and that too on the directions of the higher ups as gets revealed from the perusal of the FIR itself. SHO Police Station Crime Branch Kashmir did not conduct any independent enquiry into the matter as provided in the law laid down above before registering the FIR. He buckled

under the pressure of his superiors who addressed a communication directing him to register an FIR. The petitioner had executed the agreement with the police department on 19th of May, 2014 under the shade and cover of which he started running the eatery (Food Point). The respondents did not think it expedient to evict the petitioner from the eatery for a long span of more than three years. The respondents did not feel the need to close down the eatery at any point of time during this interregnum. They after rising from a deep slumber and after a great lull forced out and dislodged the petitioner from the premises and took umbrage under the plea that the agreement did not have the backing and support of the competent authority, although the contention of the petitioner, that the respondents have been running a canteen in the Police Headquarters at Jammu through M/S Shakti Sweets and Sh. Suhail Ahmad Mir and the PHQ Canteen is being run by Sh. Abdul Aziz Chashoo has not been denied by the respondents. It is also contended that in making these allotments no tenders have been invited, meaning thereby that the case of the petitioner has been treated as a sui-generis one and it is only he who has been discriminated against by taking shelter under a plea which is unwarranted when tested on the strength of the allotments made in favour of the aforesaid persons. Ours is a welfare state in which every person has to be looked after on the same pedestal. The respondents showed the door to the petitioner only after this Court directed them to accord consideration to his grievances and pass an appropriate order in consonance with the law. The FIR as is reiterated here was registered much after the time specified in the law laid down above, which emphatically provides that an inquiry requires to be made where there is abnormal delay/laches in initiating the prosecution. No reason has been spelt out as to how and why this delay occurred in filing the complaint before the Court though the respondents were acquainted and familiar with the contents of the agreement and running of the eatery by the petitioner from the very inception.

- 21) The law is that Section 561-A Cr.Pc envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give an effect to an order under the code (ii) to prevent abuse of process of Court and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have the inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. Courts are invested with all such powers as are necessary to do right and to undo a wrong in the course of administration of justice on the principle of *Quando lex aliquid aliique concedit conceditur et id Sine quo res ipsa esse non protest* (When the law gives the person anything, it gives him that without which it cannot exist).
- 22) Viewed in the context of all that has been said and done above, the petition of the petitioner merits to be allowed, as a consequence of which FIR No. 22/2017 registered by the respondents, the State of Jammu and Kashmir through SHO, Police Station, Crime Branch Kashmir, for the commission of offences punishable under Sections 120-B and 409 of the RPC read with Section 5(2) of the Prevention of Corruption Act, is hereby quashed including the proceedings being conducted in the aforesaid FIR as against the petitioner.

(M. K. Hanjura)
Judge

Srinagar:
28.06.2018