

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

CRMC No. 603/2018

Reserved on 21.02.2024

Pronounced on: 29.02.2024

1. **Imran, aged 23 years, S/O Mohd Farooq
R/O Village Salwa, Tehsil Mendhar,
District Poonch.**
2. **Basad Ali, age 22 years, S/O Mohd Israr,
R/O Village Sakhi Maidan, Tehsil Mendhar,
District Poonch.**
3. **Asif Farooq Mirza, age 19 years,
S/O Farooq Mirza, R/O Village Goladh,
Tehsil Mendhar, District Poonch.**
4. **Anzar Ahmed, age 20 years, S/O Mohd Taj,
R/O Village Kottan, Tehsil and District Poonch**Petitioner(s)

Through :- Mr. Altaf H Janjua, Advocate

v/s

1. **The State of J&K through its
Principal Secretary (Home), Civil Secretariat,
Jammu/Srinagar.**
2. **The District Magistrate (Deputy Commissioner)
Poonch**
3. **The Senior Superintendent of Police, Poonch**
4. **The Station House Office, Police Station,
Mendhar, District Poonch**Respondent(s)

Through :- Mr. Pawan Dev Singh, Dy AG

CRMC No. 635/2018

1. **Mohd Arif, aged 30 years S/O Mohd Sadiq,**
2. **Mohd Shafiq, aged 26 years S/O Mohd Aziz,
Both R/O Uchaad Tehsil Mankote, District Poonch**Petitioner(s)

Through:- Mr. Lawanya Sharma, Advocate

V/s

1. **State of J&K through Principal Secretary to Govt.,
Home Department, Civil Secretariat, Srinagar.**
2. **District Magistrate, Poonch**
3. **Senior Superintendent of Police, Poonch**
4. **Station house Office, Police Station, Poonch**Respondent(s)

Through:- Mr. Pawan Dev Singh, Dy AG

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

1. Petitioners in both the above titled petitions filed under Sec 561-A of J&K CrPC (akin to Section 482 of Central CrPC) seek quashment of FIR Nos. 145/2018 and 153/2018 registered at Police Station, Mendhar on 01.09.2018 for the commission of offences punishable under sections 124-A/120-B RPC.
2. It is pleaded that the registration of the FIR against the petitioners is misuse of the process in view of the fact that as per Section 196-B of CrPC which is mandatory the District Magistrate has to hold a preliminary investigation by a police officer not below the rank of Inspector before making a formal complaint for the registration of FIR and that no prosecution can be initiated for offences punishable under Chapter VI of Ranbir Penal Code except on a complaint made by the District Magistrate, in terms of section 196 of J&K CrPC.
3. Pursuant to notice, the respondents filed status report asserting therein that on a protest was carried out in Mendhar Town in favour of Article 35-A of the Indian Constitution on 31.08.2018 and the participants of the protest moving from Bus-stand towards Dak Bungalow raised pro-freedom slogans which tantamount to disaffection towards the State and the Country and eleven persons including the petitioners were identified; that a report was compiled by Police Station Mendhar and was forwarded to District Police Office, Poonch and on receiving instructions, a case was registered at Police Station Mendhar and the investigation was assigned to Inspector Mohd Ameen, SHO Police Station, Mendhar; that during the course of investigation, five persons were arrested, whereas the others including the

petitioners absconded and the arrested accused persons were admitted to bail by Sessions Court Poonch, on 13.09.2018.

4. Respondents have also filed objections in both the petitions asserting therein that these petitions are not maintainable as the same involve factual disputes, which can be adjudicated by leading evidence in the cases as this Court cannot appreciate the evidence/statements recorded by the Investigating Agency, in view of the settled law by the Hon'ble Supreme Court; that Hon'ble the Supreme Court in a case **"Kurukshetra University vs State"** while discussing the scope of Section 482 CrPC, has held that the powers can be exercised very sparingly as there is very bleak scope of interference into the investigation.
5. Learned Counsel for the petitioners argued that the registration of the FIRs is misuse of the process of law against the petitioners as for an offence under Section 124 IPC Hon'ble Supreme Court of India has stayed proceedings of all the cases involving this offence in a case, where constitutional validity of section 124-A IPC has been challenged, asserting its infringement on freedom of speech. He has further argued that the impugned FIRs requires to be quashed, in view of the fact that no FIRs could have been registered and it was only the District Magistrate who was competent to order preliminary investigation before laying a complaint that too by the District Magistrate himself. As such, no charge-sheet can be formulated by the police after investigation of the case for being presented to the Court of law. He has finally prayed that the petitions be allowed and the impugned FIRs be quashed in the interest of justice. In support of his arguments, learned counsel for the petitioners has relied upon the judgments of this Court in cases titled **"Zabir Ahmed vs State of J&K &**

Anr”, reported as **2010(2) JKJ 6[HC]**, “**Ahali Manhassan vs Financial Commissioner & Ors**”, reported as **2010(2) JKJ 7[HC]**, “**Mst. Naziran Bi & Ors vs State & Ors**”, reported as **2005(1) SLJ**, “**Sheikh Imran & Anr vs State of J&K & Ors**”, reported as **2013 (4) JKJ 520**, “**Munir Hussain & Ors vs State & Ors**”, reported as **2015(2) JKJ 743** and “**S G Vombatkere vs Union of India**”, reported as **2022 Live Law (SC) 470**.

6. Mr. Pawan Dev Singh, learned Dy AG, *ex-adversio*, argued that in view of the allegations in the police report, the District Magistrate had authorised the concerned police to investigate the matter and during investigation, the petitioners have challenged registration of the FIRs and the plea that the cognizance cannot be taken or a police report based on investigation cannot be entertained by the Court of law is an arguments in advance as the police has not concluded the investigation or laid charge-sheet so as to sustain the arguments. He has further argued that the petitioners being involved in the commission of serious offence of sedation and a criminal conspiracy cannot be let off as there is no case made out for quashment of the FIRs at this stage.
7. Heard, perused and considered.
8. The plea raised by the petitioners with regard to not taking cognizance of the offence punishable under section 124-A IPC, in view of Section 196-A of the CrPC shall be available to them before the trial Court as and when the charge-sheet is laid. Since that stage has not come, this plea cannot be raised in a petition under Section 482 CrPC before this Court seeking quashing of the FIRs itself, which is stated to be investigated under the orders of the District Magistrate concerned. The citations relied upon by the learned counsel for the petitioners, being distinguishable in view of the

facts and circumstances of the case are not applicable and are of no help to them. It will be for the police to submit the report to the District Magistrate and in case the District Magistrate does not file a complaint, this plea can be raised before the trial Court by the petitioners which can be considered as and when that stage comes. Moreover, the plea that the Supreme Court has stayed the proceedings for the commission of offence punishable under Section 124-A RPC is concerned, as there is no proceeding before any Court, this plea is also not available at this stage and the Trial Court can take note of the direction of the Apex Court passed in a case titled “**S G Vombatkere vs Union of India**”, as and when charge sheet is laid after investigation. The Apex Court, in the aforesaid case reported as **2022 Live Law (SC) 470**, was pleased to direct to keep in abeyance all pending trials, appeals and proceedings with respect to the charge framed under section 124-A RPC, besides putting an embargo on fresh registration of FIR, by the police.

9. For the reasons discussed hereinabove, both the petitions having been filed pre-maturely in absence of any charge-sheet/complaint filed before the Court of law and the cognizance having not been taken, these petitions are not maintainable at this stage on the basis of pleaded grounds. Both the **petitions thus being grossly mis-conceived are dismissed**. Interim direction, if any, shall stand vacated/revoked.
10. Both the petitions along with pending application(s) are, accordingly, **disposed of as dismissed**.

(M A Chowdhary)
Judge

JAMMU
29.02.2024
Vijay

Whether the order is speaking: Yes
Whether the order is reportable: Yes