

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 22.08.2022
Pronounced on:29.08.2022

CRMC No.464/2018

ABDUL BARI NAIK ... PETITIONER(S)

Through: - Mr. P. S. Ahmad, Advocate.

Vs.

STATE OF J&K & OTHERS ...RESPONDENT(S)

Through: - Mr. Usman Gani, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged FIR No.191/2018 for offence under Sections 153, 353 and 13 ULA(P) Act registered with Police Station, Kulgam.

2) It is averred in the petition that the petitioner is working as Assistant Professor, Geography, at Government Degree College, Kulgam, and he has undergone Ph. D course in Geography in Aligarh Muslim University. It is further averred that the petitioner is an RTI activist and has filed many RTI applications for advancing the interests of the society so that public funds are utilized in a better manner. It is averred that at the time of appointment of the petitioner as an Assistant Professor, a verification report was furnished by the police stating therein that there is nothing adverse against the petitioner. He goes on to submit that in January, 2017,

he had filed a writ petition before this Court calling into question the illegal extraction of minerals wherein an interim direction was passed by this Court and as a consequence of this, District Magistrate, Kulgam, asked Principal, Government Degree College, Kulgam, to enquire into the activities of the petitioner. A report was submitted by the Committee of Professors vide communication No.DMK/Verification/2017-2018/367 dated 08.09.2017, wherein it was reported that nothing adverse has been found against the petitioner. It is averred that the petitioner was thereafter transferred to Government Degree College, Ganderbal, and the said order was challenged by him by way of a writ petition before this Court and an interim order came to be passed in his favour in the said writ petition. It is further averred in the petition that the petitioner filed an RTI application seeking information regarding recruitment of Rahbar-e-Khel in the year 2018. According to the petitioner, all the aforesaid activities irked the respondents, as a consequence whereof, the impugned FIR came to be lodged against him.

3) The petitioner has challenged the impugned FIR on the grounds that the contents of the same are false and that no offence is made out against him even if the same are accepted at their face value. It has been further contended that the action of the respondents in registering the impugned FIR smacks of malafides and vengeance.

4) The respondents have resisted the petition by filing a reply thereto. In their reply, the respondents have submitted that the petitioner is indulging in criminal activities and he is misusing and abusing the

freedom of expression by taking aid of social media. According to respondents, the activities of the petitioner have the effect of motivating the students of the college to disrupt peace and tranquility in the area as he is provoking them to indulge in violence against the State Administration. It has been submitted that the petitioner, in order to gain cheap popularity within the area, is using illegal means to prevent the district administration from discharging their lawful activities. It is submitted that the impugned FIR has been registered on the basis of credible reports in respect of the petitioner which clearly disclose commission of cognizable offences against him. It has been contended that the petitioner is motivating the public with the ideology of extremist groups and he is indulging in a vilifying campaign against the district administration and the security forces. According to the respondents, the petitioner has committed activities which attract the provisions contained in Sections 153 and 353 of RPC and Section 13 of ULA(P) Act.

5) I have heard learned counsel for the parties and perused the record including the Case Diary.

6) Learned counsel for the petitioner has contended that the contents of the impugned FIR do not make out any offence against the petitioner. It has been submitted that even if the contents of the impugned FIR are accepted at their face value, still then at best it may amount to violation of Civil Service Rules on the part of the petitioner and in no case, it would amount to disclosure of a criminal offence against the petitioner. Learned counsel has contended that the petitioner is alleged to have uploaded

certain video clips on social media and these video clips pertain to criticism of functioning of the district administration and the same, in no way, constitute offences under Section 153 of RPC or under Section 13 of ULA(P) Act.

7) Upon perusal of the Case Diary, it is revealed that after registration of the impugned FIR, the respondents have recorded statements of the witnesses under Section 161 of the Cr. P. C and they have also seized the video clips which are alleged to have been uploaded by the petitioner on YouTube. As per the investigation conducted by the investigating agency, the petitioner is trying to motivate the common people towards separatism and he is provoking them against the police and security forces as also against district administration. As per the investigation conducted by the investigating agency, the petitioner is shown to be sympathetic towards the people who are involved in unlawful and terrorist activities and he is provoking common people against the establishment of army camps.

8) To support the aforesaid conclusions arrived at during the investigation of the case, the respondents have recorded the statements of witnesses under Section 161 of the Cr. P. C and they have also seized the video clips which are alleged to have been uploaded by the petitioner on the social media. Upon watching the video clips seized during the investigation of the case, it appears that the petitioner is conveying to the audience that Kashmiri students are being lynched and brutally tortured in other parts of the country. In one of the video clips, the petitioner is seen conveying to his audience that the children of Kashmir are being

oppressed by the security forces and the army. In yet another video clip, the petitioner is conveying that the army is hampering the movement of the people and it is obstructing the children from going to schools which has led to closure of schools. In yet another video clip, the petitioner is seen pleading cause relating to release of a person who was in custody for indulging in stone pelting and terrorist activities.

9) There are certain other video clips allegedly uploaded by the petitioner but in those video clips, the petitioner is seen only criticizing the functioning of the District Administration, the Police Department and the Revenue Department.

10) The material collected by the investigating agency during the investigation of the case clearly suggests that the petitioner is provoking or at least intending to provoke his audience to use force or violence against the institutions like the army, the police and the civil administration. The video clips also, prima facie, show that the petitioner is trying to promote enmity between the people living in Kashmir and those living in other parts of the country. Thus, it cannot be stated that the material on record does not disclose commission of any cognizable offence against the petitioner. As to what offences are exactly established or made out against the petitioner would be known only after the investigation is completed by the respondents and final report is laid before the competent court but at this stage of the investigation, it can safely be stated that the material collected by the investigating agency so

far, does disclose commission of cognizable offences against the petitioner.

11) The Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others**, 2021 SCC Online SC 315, has clearly laid down that the High Court should exercise its powers under Section 482 of the Cr. P. C to quash the investigation in an FIR in exceptional circumstances because it is the statutory duty of an investigating agency to take the investigation into an FIR to its logical conclusion.

12) Having regard to the nature of material supporting the allegations contained in the impugned FIR, the prosecution against the petitioner appears to be genuine. Thus, the instant case does not fall into the category of cases in which this Court would exercise its powers under Section 482 of the Cr. P. C to quash the proceedings in the impugned FIR. Quashing the proceedings in the instant case would amount to stifling a genuine prosecution which is impermissible in law.

13) For the forgoing reasons, there is no merit in this petition. The same is, accordingly, dismissed.

14) Case Diary be returned to the learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

Srinagar,
29.08.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No