

HIGH COURT OF JAMMU AND KASHMIR

AT JAMMU

CRMC No. 469/2018, IA No. 01/2018

Date of order: 28.12.2018

Neeta Adarsh

Vs.

State and ors.

Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge

Appearing counsel:

For Petitioner(s) : Mr. Nirmal Kotwal, Advocate

For respondent (s) : Mr. C. M. Koul, Sr. AAG

- i) Whether to be reported in Digest/Journal : Yes/No.
- ii) Whether approved for reporting in Press/Media : Yes/No.
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1. Through the instant petition filed under Section 561-A of the Code of Criminal Procedure (hereinafter for short, Cr.P.C.), petitioner seeks quashing of the order dated 17.05.2018, passed by learned 3rd Additional Munsiff, Jammu whereby it has been held that no direction can be passed under Section 156(3) of Cr.P.C to the police to investigate the matter and the complaint has been dismissed.
2. The factual matrix of the case is that petitioner filed a complaint u/s 376/109 read with Section 34 and 120-B of RPC against respondent Nos. 2 to 4 pleading therein that the petitioner in the year 2008 in connection with her training hired rented accommodation in the House of respondent Nos.2 to 4 i.e., JDA-22 New Rehari Jammu w.e.f. 17th July, 2008 on monthly rent of Rs.2,400/-. The petitioner used to pay monthly rent to the respondents, but the respondent No.4 exploited the emotions and sentiments of the petitioner by saying that the petitioner is like a daughter knowing well that the petitioner belongs to a Scheduled Caste

community and the respondents 2 to 4 are from Brahmin community. The petitioner has pleaded in the complaint that with the passage of time the petitioner/complainant being alone at Jammu fell prey to the sentiments expressed by respondent No.4 and the petitioner was made to work as household apart from doing her training. It is further submitted that the petitioner completed her training and got a job in Govt. Medical College Jammu in the year 2013 against the post of Multipurpose Health Worker on contractual basis, however, in the year 2014 the respondent No.2 suffered some bleeding problem and the petitioner being an employee in Medical Department was requested by respondent Nos.3 and 4 to seek appointment from Dr. Sanjeev Bhat and on examination of respondent No.2, the petitioner came to know that the respondent No.2 is suffering from BSD which had turned very serious because of non-treatment at an early stage. It has been further stated in the complaint that the Doctor Sanjeev Bhat advised the respondent No. 2 to take medical treatment and it was also advised to have regular check-up. The respondent No.2 many a times fell unconscious and respondent Nos. 3 & 4 always requested the petitioner to give breathing from mouth to mouth to respondent No. 2. In the complaint it was further stated that respondent Nos.3 & 4 exploited the sentiments of petitioner by saying that the life of respondent No.2 is very short and now the petitioner has to take care of respondent No.2. It was pleaded in the complaint that the petitioner was also forced to accompany respondent No.2 to the doctors and to the utter surprise of the petitioner the respondent Nos.3 & 4 revealed on 9th November, 2014 that the respondent No. 2 has fallen in love with the petitioner and now cannot live without her love and affection. It is stated that respondent Nos.3 & 4 exploited the petitioner to such an extent that the petitioner was requested to give company to respondent No.2 in the night hours also. The respondent No.2 forcibly and without the consent of the petitioner had

sexual intercourse with her and thereafter the things became so worst that whenever the petitioner was on her duty the respondent No.2 used to call her on the pretext that he is not feeling well and the petitioner sensing medical problem of the respondent No.2 used to rush at the residence i.e. JDA-22 New Rehari, Jammu of the respondents, after availing leave and on arrival used to find respondents 2 to 4 sitting together. The respondent No.2 on the pretext of taking medicines used to take the petitioner in the room in presence of respondents 3 & 4 and exploit the petitioner by resorting to forcible sexual intercourse. The petitioner objected many a times, but the respondent Nos.3 & 4 consoled the petitioner that the petitioner can only save the life of respondent No.2. It was further pleaded in the complaint that the things and circumstances had gone beyond the control of the petitioner, because the petitioner had been exploited by respondents 2 to 4 to have sexual intercourse without her consent so many times, that the petitioner thought of committing suicide and on 02.09.2016, the petitioner perturbed by the sexual exploitation by respondent Nos.2 to 4 left the rented house and went to end her life at Akhnoor, but the respondent Nos.2 to 4 sensing some adverse circumstances followed the petitioner and in order to overcome any criminal proceedings against them from the petitioner again exploited her and got an agreement of marriage between the petitioner and respondent No. 2 totally against the consent of petitioner. The agreement was executed on 08.09.2016 against the consent of the petitioner because the respondents got the agreement executed only to safeguard themselves from criminal proceedings. It was further pleaded in the complaint that she has been forced to undergo sexual intercourse without her consent by the accused persons and they have committed offence under Section 376/34 RPC with the petitioner. The petitioner further pleaded in the complaint that the petitioner even went to the police, but nothing was done because the

respondent Nos.2 to 4 were very influential and high headed persons and police was hand in glove with respondents. Further, respondent Nos.3 & 4 managed an accommodation at New Plot Tali Morh Jammu just to show that the petitioner is no more tenant of respondent Nos.3 & 4. It is stated that respondent No.2 exploited the petitioner even at rented accommodation at New Plot Jammu number of times by committing sexual assault without her consent. The petitioner pleaded in the complaint that the petitioner approached the concerned Superintendent of Police Jammu, number of times, who failed to take cognizance of the case. It is stated that the complaint was filed in the Court of Chief Judicial Magistrate, Jammu which was further transferred to the Court of 3rd Additional Munsiff (JMJC) Jammu for further adjudication. The learned 3rd Additional Munsiff Jammu on 24.04.2018 passed an order which is not only illegal, but is contrary to the provisions of law. The learned 3rd Additional Munsiff Jammu dismissed the complaint on the ground that power under Section 156 (3) Cr.P.C. cannot be exercised because a matrimonial dispute under Section 13 of Hindu Marriage Act is pending before the Matrimonial Court, Jammu between the parties and the parents of respondent No.2 has already executed deed of disinheritance in respect of respondent No. 2. The Court below has also rejected the complaint on the ground that the police has already acted upon and as per police report no offence is made out against the respondent Nos.2 to 4, as such, no direction can be issued to the police to investigate the matters under section 156 (3) of Cr P.C.

3. Through the instant petition, petitioner seeks quashing of the impugned order dated 17 05.2018 on the following grounds:-

- (i) **That the impugned order is illegal, contrary to facts and circumstances of the case and is unsustainable in the eye of law, as such need to be quashed.**

- (ii) That the learned Magistrate has not appreciated the law governing the subject as the petitioner had made all out efforts before the concerned police to take cognizance of the matter, but since the police failed to take cognizance;
- (iii) That the learned Magistrate has committed illegality by entertaining the report of the police submitted in response to order dated 24.04.2018 passed by the learned Magistrate because in terms of order dated 24.04.2018 only factual report was to be verified from the conceded Police Station as to whether the petitioner prior to approaching the Magistrate for invoking power under Section 156 (3) Cr. P.C has approached the police or not. The learned Magistrate has erred in accepting the report of police because the accused persons were provided ample opportunity to put their defence by the police which is not permissible and the material according to the choice of accused persons was submitted to the learned Magistrate which was sufficient to prejudice the mind of the learned Magistrate that no case is made out; that the police travelled beyond the scope of the order passed by the learned Magistrate dated 24.04.2018. and even after passing of order dated 24.04.2018 neither the statement of petitioner was recorded by SHO Police Station, Pacca Danga, Jammu nor In-charge Police Post Rehari nor any investigation was carried out.
- (iv) That the learned Magistrate has also committed illegality by saying that there is delay in lodging the complaint, but fact still remains that the commission of offence under section 376 RPC is a recurring cause of action particularly when the accused persons played fraud and misrepresentation on the petitioner just to get rid of her, because as on date also the accused No. 2 is in connivance with accused Nos. 3 & 4 has gone in hibernation and is not traceable; that the learned Magistrate wrongly interpreted the missing report lodged by the petitioner with the in-charge police post Rehari and has also misinterpreted the dependency of a divorce petition in the family court at Jammu filed at the behest of respondent/accused No. 2, which clearly indicates that the respondent No. 2 to 4 had involved the petitioner in the marriage tie just to get rid of the rigor of offence committed upon the person of the petitioner under Section 376 RPC.

4. Objections have been filed by respondent Nos. 2 to 4. The stand taken in the objections is that the petition of the petitioner is liable to be dismissed on the ground that she has intentionally and deliberately suppressed true and material facts from the Court. In the objections it has been averred that the respondent no. 2 vide marriage agreement dated 08.09.2016 has solemnized marriage with the petitioner as per Hindu Rites and Customs. At the time of marriage the petitioner herein was 38 years of age and the

respondent no.2 was only 26 years old. It is further stated that in the said agreement the petitioner has submitted/admitted that she was a Hindu Virgin 38 years old girl. The said marriage agreement was also registered by the Notary Public, Jammu in front of two independent witnesses who are the close relatives of the petitioner (i.e. brother and sister). It is further averred that respondent no.2 and petitioner have also performed marriage as per Hindu rites and customs at Arya Samaj Mandir Dayanand Marg, Jammu on 14.10.2016 and in this regard a certificate was also issued in their favour. Further, the said marriage between the respondent no. 2 & petitioner was a love marriage and has been solemnized against the wishes of respondent Nos.3 &4 due to which the respondent no.3 executed a deed of disinheritance on 28.10.2016 whereby the respondent no.3 disinherited respondent no.2 from all of his moveable as well as immoveable properties. Thereafter the respondent no.2 and petitioner started living at House No.288, Puran Nagar New Plots, Jammu. Soon after the marriage the behavior and attitude of the petitioner towards the respondent no.2 was not good due to which the parties get separated from each other on 28.01.2018 because of a scuffle and the respondent no.2 left the house. Thereafter, the petitioner lodged a missing report before Police Post Rehari and in the month of February, 2018 the respondent no.2 came back and the police had called his parents and the petitioner in the police post and during this period the parents of the respondent no.2 submitted that the respondent no.2 has already been disinherited and he can live anywhere he wants to live and thereafter the case was closed. Being not satisfied with the same, the petitioner has also filed petition under Section 9 of Hindu Marriage Act on 06.03.2018 wherein she gave her residential address at H.No. 288 Puran Nagar New Plots, Jammu and seeks restitution of conjugal rights before the Court of Ld. Additional District, Judge (Matrimonial Cases) Jammu. The said petition was decided on 17.05.2018 on the ground that

the petitioner herein was not interested to press the same and same was, accordingly, dismissed as withdrawn by the petitioner on her own. It is further submitted that in the said petition filed under Section 9 of Hindu Marriage, Act in para no.3 she had stated that she was virgin at the time of her marriage and when nothing has been received in shape of relief from the Court of Ld Additional District Judge, Matrimonial Cases, Jammu, the petitioner here in just to defame and harass respondents by concealing the fact of pendency of petition mentioned above, filed an application under Section 156 (3) Cr.P.C seeking direction to Police of Police Station, Pacca Danga to lodge an FIR against the respondents under Sections 376, 109 read with Section 34 and 120-B RPC. In the said complaint the petitioner has mentioned her address as Kulwanta Ramnagar, Udhampur at present Jammu. The said complaint of the petitioner was decided on 17.05.2018 by the Court of Ld 3rd Additional Munsiff (JMJC) Jammu. In the said order the court of Ld 3rd Additional Munsiff (JMJC), Jammu clearly stated that the petitioner has suppressed material facts from this court and has not approached to this court with clean hands. Further, the learned Court has also stated that the dispute is a matrimonial one and complainant instead of resorting to the available legal recourse has misused the process of the court by invoking the provisions of section 156(3) Cr.P.C. Further, when the learned court rejected the complaint, the petitioner has also withdrawn the petition under Section 9 on the same very date i.e. 17.05.2018. Further the petitioner herein just to defame the respondents and their family members has also posted defamatory posts on social sites and she always threatened the respondents of dire consequences due to which the respondent no. 4 has also filed a complaint against petitioner under Section 156 (3) Cr.P.C. before the court of Judicial Magistrate 1st Class, Jammu in which the learned court vide its order dated 19.07.2018 directed the SHO Police Station, Pacca Danga to file compliance report

by enquiring the matter. It is also stated that the petition of the petitioner is further liable to be dismissed on the ground that before filing complaint under Section 156 (3) the petitioner has not followed the provisions of Section 154 Cr.P.C., and all the facts narrated above, have been concealed by the petitioner in all her proceeding including the instant one which clearly shows that the petitioner just to take revenge from the respondents has filed the instant petition.

5. In support of his contention, learned counsel for the petitioner relies upon the decisions of the Hon'ble Supreme Court reported in case titled **Lalita Kumari vs. Govt. of U.P. and ors.** reported in **2008 (7) SCC 164**; and **Mrs. Priyanka Srivastava and anr. vs. State of U.P. and ors**, reported in **(2015) 6 SCC 287**.
6. I have considered the rival contentions. From the perusal of documents annexed with the petition, it is evident that petitioner filed a criminal complaint against respondents for offences u/s 376/109/34/120-B RPC before JMIC on the same averments which have been mentioned in this petition.
7. On 24.04.20018 JMIC Jammu (3rd Additional Munsiff) passed an order thereby directing SHO P/S Pacca Danga to file status report, as JMIC was of the view that complainant has already filed a complaint before Police Post Rehari and SP, Jammu. The concerned SHO P/S Pacca Danga filed status report; JMIC after going through status report dismissed the complaint and refused to pass any order on said complaint on 17.05.2018.
8. The operative part of order dated 17.05.2018 passed by 3rd Additional Munisff (JMIC) Jammu reads as under:

“In the case in hand, it is alleged by the complainant that she has been subjected to forcible sexual intercourse by accused no. 1 since 2014 without her consent and when she decided to end her life by committing suicide she was exploited emotionally by accused no: 2 and 3 and was forced to enter into wedlock of marriage with accused no: 1 in November 2016 and the accused no: 1 kept on exploiting the complainant to forcible sexual intercourse eve after marriage.

This Court has directed the P/P Rehari Jammu to file a status report regarding the complaint filed by the complainant. The status report was filed by the concerned Police authorities and perusal of the same reveals that in 2008 the complainant was undergoing training at GMC Jammu and had taken the room from the accused persons on rent @ 2400/- per month at New Rehari. In the year 2013, the complainant got a job at GMC Bakshi Nagar Jammu and was about to shift but in 2014, the accused no: 1 got critically ill and the complainant helped him in getting the treatment and during this they fell in love with each other. The Complainant and accused no: 1 revealed about their love affair to accused no. 2 and 3 and requested them for marriage who refused and then on 2-9-2016, the complainant threatened them to commit suicide. The parents of accused no: 1 tried to make her understand but she didn't agree and accused no. 1 and complainant against the wishes of his parents told them that they will marry each other and left the lhouse of accused no. 2 and shifted to a rented accommodation at Puran Nagar H. no: 286 New Plot Jammu and started living there. Both accused no: 1 and complainant did enter into an agreement in the Court and on 14-10-2016 both got married at Arya Samaj Mandir in which parents of the complainant were present but accused no: 1 parent were not aware of it. The accused no: 2 disinherited the accused no: 1 because of his marriage with the complainant. The complainant and accused no: 1 after this started living together and stayed together till 28-01-2018 and then because of scuffles the accused no: 1 left the house at Puran Nagar New Plot. The complainant on her own tried to locate him and in the month of February, 2018 the accused no: 1 came back. The police called upon the parents of accused no. 1 and the complainant in the police post and after the close report they all went back. It was submitted by accused no. 2 that he has disinherited the accused no. 1 and they can live anywhere as per their choice. A case between the complainant and the accused no: 1 u/s 13 HM Act is pending before the Court of Add. District Matrimonial. Since 28-01-2018, the complainant and the accused no: 1 are living separately It is submitted that apart from missing report the police have not received any application from the complainant at Police Post Rehari.

In the case in hand, there are certain things which cast doubt on the veracity of the assertions leveled by the applicant against the non-applicants/accused and has to be looked into before passing any directions u/s 156(3) Cr.PC:

1. Perusal of the complaint reveals that she has been subjected to forcible sexual intercourse by accused no: 1 since 2014 till 2016 but she never reported the same to any one and in the year 2018 of all a sudden she has resorted to the provisions of section 156(3) Cr.PC by filing the present application. No logical and reasonable explanation of delay/laches has been given by the applicant in the present application in not approaching the Court for the redressal of her grievance.

2. The applicant has suppressed material facts from this Court and has not approached this Court with clean hands. It can be elucidated from the status report that the complainant and accused no: 1 have done marriage against the wish of accused no:2and 3 and have accordingly shifted to new rented accommodation at Puran Nagar New Plot Jammu and thereafter because of some scuffle the accused no: 1 left the said house and to this extent, the complainant has lodged a missing report of accused no: 1 at Police Post Rehari, Jammu. Even it is not disclosed by the complainant that a petition u/s 13 Hindu Marriage Act is pending adjudication before the Matrimonial Court Jammu between the complainant and the accused no: 1. Thus, by filing the present application the applicant has abused the process of the Court by concealment of material facts.

3. In the matrimonial dispute between the parties, an aggrieved person/complainant instead of restoring to the available legal resources have misused the process of the Court by invoking the provisions of section 156(3) Cr.PC. In the case in hand, there is a matrimonial dispute between the parties and the Police have already acted and has filed status report stating therein that no offence u/s 376/34 RPC is made out against the accused persons. The import of section 156 (3) Cr.PC is to put Police into motion and if because of the inaction of the Police the aggrieved person has suffered, the Court can direct the Police to investigate the matter if it discloses the commission of cognizable offence. If the Police has already acted upon, and as per Police report no offence is made out against the accused persons, no direction can be passed to the Police to investigate the matter u/s 156(3) Cr.PC

Accordingly, in my considered opinion, no directions can be passed u/s 156(3) Cr.PC to the Police to investigate the matter and as such, the present application being devoid of any merit is dismissed. Consigned to records after its due compilation u/r.”

9. From the bare perusal of impugned order of JMIC, it is evident that JMIC has dismissed the complaint and refused to take cognizance or sending the complaint to police under section 156(3)Cr.P.C., on the ground that there appears to be matrimonial dispute between the parties and wife/complainant instead of restoring to the available legal recourse

has filed present complaint by misusing the process of the Court by invoking the provisions of section 156(3) Cr.P.C. JMIC has further held that Police has already acted on complaint filed by complainant and found no offence as 376/34 RPC was made out against the accused persons.

10. Criminal law is now well established that if a private complaint is given to the Magistrate, he has the power to take cognizance of a private complaint under the provisions of clause Section 190 of the Criminal Procedure Code.

“190. Cognizance of offences by Magistrates.— (1) Except as hereinafter provided any Chief Judicial Magistrate and any other Judicial Magistrate specifically empowered in this behalf may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

11. As is seen from above, Section 190 Cr.P.C. lays down as to how cognizance of offences can be taken by Magistrates. It is by taking cognizance of an offence that the court machinery is set in motion in respect of criminal cases. Cognizance of an offence can be taken in one of the three ways mentioned in Section 190 Cr.P.C.:

(1) On the basis of a complaint;

(2) On the basis of a police report under Section 173 Cr.P.C. (which may be a charge sheet or, in fact, even a closure report);

(3) On the basis of the Magistrate's own knowledge or information received from any person other than a police officer.

12. Thus, if a complaint is received by the Magistrate, the power to take cognizance on the basis of such complaint is under Section 190 of

Cr.P.C. However, further action on such complaint has to be taken under Sections 200-204 of Cr.P.C. Under Section 200 Cr.P.C., the Magistrate is required to record the statement of the complainant on oath, and also of other witnesses, if present. The objective sought to be achieved by Section 200 is that a large number of complaints are filed by private individuals, many of which may be frivolous complaints. Therefore, it is considered necessary to verify the details of such complaints by examining the complainant on oath under Section 200 of Cr.P.C. In certain complaint cases, action may have to be taken by the Magistrate under the provisions of Section 202 Cr.P.C., i.e., an inquiry by the Magistrate himself or an investigation by police, etc. After these steps, if the Magistrate does not find sufficient ground to proceed further, he may dismiss the complaint under Section 203 of Cr.P.C.; on the other hand, if he finds sufficient ground to proceed, he may issue process under Section 204 of Cr.P.C.

13. Magistrate has also option to direct police to conduct investigation in terms of section 156(3) Cr.P.C., which is called pre cognizance stage. But in any case, Magistrate has to apply judicial mind before proceeding ahead as to whether allegations leveled shows cognizable offence and also to find out truthfulness of allegations. Magistrate in order to satisfy himself with regard to truthfulness of allegations may conduct inquiry or call for report from police, if he comes to conclusion that police had already conducted some sort of investigation on same allegations.
14. Calling a person to stand criminal proceeding on frivolous or vexatious allegations, amount to violation of his fundamental right.
15. Supreme Court of India in **M/s Pepsi Foods Ltd. & Anr. vs Special Judicial Magistrate & Ors.**, reported in **1998 (0) SCC (Cri) 1400**, it is held as under:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

16. In present case, after going through the circumstances of the case and order of JMIC, Jammu, I am of the considered opinion that order of Magistrate is correct and does not suffer from any infirmity of law. This petition is **dismissed** accordingly.

(Sanjay Kumar Gupta)
Judge

Jammu
28.12.2018
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