

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raza Ali Khan, J.

Civil PLA No. 178 of 2021

(Filed on 15.04.2021)

1. Mumtaz Hussain s/o Noor Alam Shah.
2. Kafayat Hussain Shah s/o Noor Alam Shah r/o Chalhana, Tehsil Authmuqam, District Neelum, Azad Jammu & Kashmir.

.....PETITIONERS

VERSUS

1. State through Advocate-General of Jammu & Kashmir, Muzaffarabad.
2. Station House Officer, Police Station City Authmuqam, District Neelum, Azad Jammu & Kashmir.
3. Syed Ishtiaq Ali Bukhari s/o Syed Ali Shah Bukhari r/o Chalhana Peyalian, Tehsil Authmuqam, District Neelum, Azad Jammu & Kashmir.

.....RESPONDENTS

[On appeal from the judgment of the High Court dated 09.02.2021 in writ petition No. 1148 of 2020]

FOR THE PETITIONERS: Mr. Akhlq Hussain
 Mughal, Advocate.

FOR THE RESPONDENTS: Nemo.

Date of hearing: 15.07.2021.

ORDER:

Raza Ali Khan, J.– The captioned petition for leave to appeal has been directed against the judgment of the High Court of Azad Jammu & Kashmir, dated 09.02.2021, passed in writ petition No. 1148 of 2020.

2. The precise facts culminating into this petition for leave to appeal are that an FIR No. 461/2020, was lodged against the petitioners, herein, at the Police Station City Authmuqam, in the offences under section 489-Y, CLA 506 (2) APC, on 05.09.2020. The petitioners, herein, filed a writ petition before the High Court of Azad Jammu & Kashmir for quashment of the said FIR, and

stated that the same has been lodged without lawful authority and is of no legal effect. It was stated that the occurrence took place in the year 2016, whereas, the cause of action of the incident is mentioned in the said FIR as 04.09.2020. It was further stated that both the petitioners are living in Karachi and have neither threatened for dire consequences and murder of respondent No. 3, nor committed any cognizable offence. It was further stated that a legal notice was issued through counsel by respondent No. 3, against eight persons regarding publication of defamatory material on social media and print media but he did not mention specific words which were used against the dignity and self-respect of complainant. The learned High Court after hearing the preliminary arguments has dismissed the writ petition in limine, through the impugned judgment dated 09.02.2021.

3. Mr. Akhlaq Hussain Mughal, the learned Advocate for the petitioner while reiterating the grounds taken in the petition for leave to appeal argued that the impugned judgment of the learned High Court is against law and the facts of the case. He argued that the learned Judge has not applied a judicial mind while handing down the impugned judgment. He further argued that respondent No. 3 made a false story against the petitioners and illegally lodged a fabricated case/ FIR dated 05.09.2021. He further argued that the petitioners have never threatened respondent No. 3 nor any cognizable offence has been committed. He added that no specific role has been attributed to the petitioners in the FIR, therefore, the judgment of the learned High Court is not maintainable. He finally prayed for grant of leave.

4. I have heard the arguments advanced on behalf of the petitioner and examined the case from all

aspects. The perusal of the record divulges that FIR No. 461/20, was lodged by the complainant in the offences mentioned above against the petitioners, herein. The petitioners, herein, filed a writ petition before the High Court for quashment of the FIR but the learned High Court has dismissed the same in limine. In my view the allegations leveled against the petitioners relate to the question of facts which can only be determined by the investigating agency and thereafter, by the trial Court. Admittedly, the case is at the stage of investigation and the learned High Court has no jurisdiction to quash criminal proceedings at the stage of investigation or thereafter as has been held in number of cases by this Court. The High Court in exercise of writ jurisdiction is not competent to assume the role of investigating agency or the trial Court to give verdict as to whether an accused has committed an offence or not. The High Court should not embark upon an inquiry into the merits and demerits

of the allegations and quash the proceedings without allowing the investigating agency to complete its task at first. It is evident from the precedents set by this Court, that only the following situation demand an FIR to be quashed:

- i. Where the allegation made in the First Information Report or complaint, even if they are taken at their face value and accepted in their entirety do not constitute a cognizable offence or make out a case against the accused.
- ii. Where the allegation in the first information report and other material collected by the investigating agency, do not disclose a cognizable offence.
- iii. Where a criminal proceeding is manifestly attended with mala-fide and where the proceedings is maliciously instituted with a view to spite him due to private or personal grudge.
- iv. Where there is an express legal bar engrafted in any of the provision of code or act concerned to the institution and continuance of the proceedings,

or where, specific provision of code or act provide efficacious redress for the grievance of the aggrieved party.

- v. Where the allegations in the FIR are so absurd and improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against accused.

4. According to Section 561-A Cr.PC and Article 44 of the interim Constitution, the High Court's jurisdiction to quash an FIR is very limited. As discussed before, until the case completes its investigation phase, the learned High Court cannot intervene and quash the proceedings and assume the role of the investigating agency. Only extraordinary circumstances require such intervention and to the extent of the case in hand; I do not find any extraordinary circumstances which required the extraordinary jurisdiction of the learned High Court to be exercised. Hence, the learned High Court without committing any illegality dismissed the writ petition in

limine, through the impugned judgment dated 09.02.2021.

For what has been stated above, leave declined and petition for leave to appeal stands dismissed.

Muzaffarabad,

JUDGE