

S. No.
Supp Cause List

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

CRM(M) No. 112/2020 c/w

CRM(M) No. 28/2020

Reserved on: 13.12.2022

Pronounced on: 07.02.2023

Parwez Samuel Koul and Ors

...Petitioner(s)

Through: Mr Sunil Sethi, Sr. Advocate with
Mr. Parimoksh Seth, Advocate.

Vs.

UT of J&K through Principal Secretary and Ors

...Respondent(s)

Through: Ms Asifa Padroo, AAG for official respondents
Mr S. H. Thakur, Advocate for complainants/respondents

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

JUDGEMENT

The instant petitions raise issues which are analogues, interconnected and akin to each other, as such, are being taken up for disposal jointly here under.

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The brief facts leading to the filling of the instant petition are as follows: -

- Respondents 4 and 5 herein (for short the complainants) are stated to have filed a complaint before the Chief Judicial Magistrate, Srinagar, against the petitioners herein for allegations of fraud, cheating, embezzlement and misappropriation of funds of an educational society namely "Tyndale Biscoe and Mallinson Society Kashmir" (for short the Society) and Schools namely "The Kashmir Valley School Budgam" and "Tyndale-Biscoe Mallinson School Shajimarg Tangmarg" (for short the Schools) run by the said Society besides, alleging conversion of assets of the Society and the Schools into their personal assets and also for misappropriating grants provided by the government worth crores

of rupees to the Society and the Schools in violation of rules of the Society.

- The aforesaid complaint is stated to have been followed by another complaint filed by the complainants against the petitioners before the Court of Chief Judicial Magistrate, Srinagar, in the year 2019 as well having been forwarded by it to SSP Crime Branch for report in terms of order dated 28.11.2019 alleging therein again the same acts of omission and commission committed by the petitioners herein.

During the pendency of the aforesaid complaints for enquiry before the Crime Branch, the complainants are stated to have also filed a representation/complaint against the petitioners herein before respondent no. 2 seeking registration of an FIR and constitution of a Special Investigation Team (SIT) thereof with almost the same set of allegations as had been leveled in the complaint filed by them earlier before the Chief Judicial Magistrate, Srinagar.

- It is being stated that on 14.10.2019 the Chief Judicial Magistrate, Srinagar, after noticing that none appeared in the matter, directed the police after perusal of the report that in case impugned alleged offence by the accused persons are made out consequent legal action under law be initiated and the complaint accordingly came to be dismissed, whereafter the complainants are stated to have filed another complaint supra before the Chief Judicial Magistrate, Srinagar, wherein SSP Crime Branch came to be directed to submit a report in terms of order dated 28.11.2019 supra.
- It is being next stated that respondent 3 submitted a report before the Chief Judicial Magistrate, Srinagar, on 30.11.2019 in response to order dated 28.11.2019 indicating therein that the enquiry is at its final stage. The said complaint is stated to have been entertained by respondent 2 in presence of the complaint pending enquiry before the respondent 3 pursuant to the directions passed by the Chief Judicial Magistrate, Srinagar.

- It is being further stated that the complainants instead of pursuing the complaints filed before the Chief Judicial Magistrate, Srinagar under enquiry before the Crime Branch inasmuch as in presence of 3rd complaint filed before respondent 2, yet filed another complaint before the Director Industries and Commerce, Kashmir, being Registrar of Societies under J&K Societies Registration Act, on 31.12.2019 against the petitioners herein on same set of allegations.

The filing of the initial complaint as also the successive complaints filed thereafter by the complainants against the petitioners inasmuch as entertaining the same as also setting into motion process thereof by the Court of Chief Judicial Magistrate, Srinagar coupled with the enquiry/ies initiated by the Crime Branch is being questioned in the instant petition by the petitioners *inter-alia* on the ground that the complaints are false, frivolous, highly motivated having been mechanically entertained and forwarded for enquiry/investigation by the Chief Judicial Magistrate, Srinagar, inasmuch without there being any substance therein the same subjecting the petitioners to harassment, victimization as also being abuse of process of law.

Reply to the petition has been filed by the respondents 2 and 3 as also respondents 4 and 5.

- **In the reply filed by respondents 2 and 3** it is being admitted that the complaint came to be received on 14.12.2018 from the Chief Judicial Magistrate, Srinagar whereafter an enquiry bearing No. 214/2018 was initiated wherein most of the allegations were not proved on the face of evidence both orally and documentary mainly provided by school administration run by the petitioners.
- It is also being stated that during the pendency of the said enquiry, the complainants submitted a representation/complaint before the respondent 3 and simultaneously before respondent No. 2 whereupon the respondent 2 directed respondent 3 to initiate a preliminary verification resulting into initiation of

preliminary verification bearing No. 02/2020 which formal verification with regard to the trustees of the school were found to be in conflict with information received from the Registrar of Societies J&K and the said complaint filed by complainants against the petitioners disclosed offences of fraud, cheating, misappropriation and conspiracy.

In the response filed by respondents 4 and 5 to the petition, the complainants have reiterated the facts inasmuch as the allegations leveled against the petitioners herein in the complaints filed by them before the Chief Judicial Magistrate, Srinagar, as well as respondent 2, and based on the said response seek dismissal of the petition with exemplary costs.

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It is pertinent to note that the facts stated and noticed in the CRM(M) No. 28/2020 supra have been reiterated and repeated in the instant petition insofar as a complaints filed by complainants (being respondents 7 and 8 herein) against the petitioners before the Chief Judicial Magistrate, Srinagar on 12.12.2018, Registrar Societies on 31.12.2019 are concerned and in addition thereto, a complaint is also stated to have been filed before the and Director Industries and Commerce, and the Divisional Commissioner, Kashmir who is stated to have forwarded the same to Joint Director Education for holding of an enquiry in terms of order dated 06.03.2020.

- It is being further stated that the respondents complainants filed a similar complaint before the respondent 2 herein having been forwarded to respondent 4 for investigation in terms of communication No. Adm/K/PS/20-21/Misc./223-25 dated 29.05.2020 being impugned in the petition.

Reply to the petition has been filed by respondents 7 and 8 wherein the respondents have again reiterated the same facts, circumstances and allegations as have been leveled by them against the petitioners.

For the sake of brevity and in order to avoid repetition, the said reply need not to be referred to herein.

The instant petitions are being maintained by the petitioners *inter-alia* on the grounds that they have been subjected to multiple enquiries/investigations for same set of allegations leveled by the complainants in successive complaints and that the official respondents despite being aware about the said complaints, enquiries and investigations initiated thereupon and though having been questioned by the petitioners before this court in WP(C) No. 803/2020 and WP(C) No. 901/2020 yet entertained the said complaints for enquiry and investigation illegally, without any competence and in breach and violation of fundamental rights of the petitioners for *mala-fide* consideration aimed at to black-mail, victimize and harass the petitioners, besides being an abuse of process of law.

Heard learned counsel for the parties and perused the record.

Submissions of counsel for the petitioners.

Mr. Sunil Sethi learned Sr. Counsel appearing for the petitioners while making his submissions would contend that the complainant (respondent 4 in CRM(M) No. 28/2020 supra) had been an employee of the Tyndale Biscoe School since 2004 and resigned in the year 2018 whereafter the said complainant started harassing and blackmailing the petitioners by filing false, frivolous and baseless complaints against the petitioners, the Society and the Schools run by the said Society.

Mr. Sethi would further contend that after filing the first complaint before the Chief Judicial Magistrate, Srinagar, in the year 2018, the complainant also filed a complaint before the Divisional Commissioner, Kashmir, which came to be forwarded by him to the Joint Director Education Department for holding of an enquiry which action came to be questioned by the petitioners in WP(C) No. 803/2020 before this Court.

Mr. Sethi would next contend that the complainants filed another complaint on the similar set of allegations against the

petitioners before the Director Industries and Commerce Department who while taking cognizance thereof sought information from the Chairman Bishop of the Diocese of Amritsar on 07.01.2020 and in addition thereto, another complaint came to be lodged by the complainants before the Assistant Commissioner Nazool against the petitioners against which complaint and action initiated thereupon as well the petitioners filed WP(C) no. 901/2020 before this Court.

According to Mr. Sethi both WP(C) 803/2020 and WP(C) 901/2020 supra came to be allowed by this Court by a common judgement dated 09.09.2021 and issued the process initiated by the official respondents upon the said complaints filed by the complainants against the petitioners.

Mr. Sethi would also submit that the allegations leveled against the petitioners in the complaint filed before the official respondents herein in the instant petitions are as well baseless and unfounded aimed at to blackmail, harass and victimize the petitioners having been filed successively one after another on same set of allegations and without any competence and jurisdiction taken cognizance of by the official respondents.

Mr. Sethi would further contend that petitioners admittedly purchased various properties in their names out of the funds of the Society however, the said properties were purchased in their own names owing to the operation of the then Article 370 and 35-A of the Constitution of India as the Society could not purchase the said properties being not a State subject of the then State. Mr. Sethi would submit that all the said properties are and belong to the Society and the Schools in terms of Section 18 of the Jammu and Kashmir School Education Act, 2002.

It is further contended by Mr Sethi that the allegations of cheating, fraud and misappropriation leveled against the petitioners besides being false, unfounded and baseless are otherwise not attracted against the petitioners as the complainants do not claim to be the persons either cheated or defrauded warranting application of relevant provisions of the Penal Code.

Mr. Sethi would lastly contend that the complainants have been continuously subjecting the petitioners to harassment, blackmailing and persecution by filing false, baseless and unfounded successive complaints on same set of allegations, without any lawful justification, but for extraneous considerations coupled with oblique motives.

Submissions of the counsel for the complainants/respondents.

Mr. S. H. Thakur, appearing counsel for the respondents/complainants while opposing and controverting the submissions made by Mr. Sethi would contend that the complainants are the members of a Christian Missionary Society and have as such a right to secure and protect the interests of the Society and the schools being run and operated by it. Mr. Thakur would further submit that the petitions have been maintained by the petitioners to cover up the fraud, embezzlement and misappropriation of the Society and the schools funds as such, are liable to be dismissed.

Analysis

In order to address to the issues raised in the instant petitions, it would be advantageous and appropriate to refer to following provisions of the Jammu and Kashmir School Education Act, 2002, being relevant and germane herein, as the case setup by the complainants/respondents relate to the allegations of fraud, embezzlement and misappropriation of funds of the Society and the schools run and operated by it.

Section 3- pertains to the application of the Act and applies to all the Schools in the State.

Section 11- provides that no private school shall be established, run or maintained without permission in writing of the Government or competent authority.

Section 13- deals with the management of the private schools and provides that no private school shall be managed and run

by any person other than an educational agency which agency has to appoint a manager for looking after day-to-day running and administration of the schools managed and run by such education agency.

Section 18 of the Act provides that any property or assets owned, hold or acquired by any person in or on behalf of any private school shall for the purposes of this Act be deemed to be property of the educational agency notwithstanding that such property stands in the name of any individual.

Besides above, it would also be pertinent and appropriate to refer to the sum and substance of the allegations leveled by the complainants against the petitioners in the complaints filed by them before the Chief Judicial Magistrate, Srinagar, and other official respondents herein. The allegations admittedly are of fraud, cheating and misappropriation of the funds of the Society and the Schools, besides to breach of trust. Indisputably neither the Society nor the Schools are the complainants alleging the said acts of omission and commission against the petitioners in relation to their affairs, funds or properties. The complainants thus, cannot by any sense of imagination said to be the persons aggrieved of or persons having suffered on account of alleged offences at the hands of the petitioners, be it the offence of fraud, cheating or misappropriation of the funds of the Society or the Schools, more so in presence of the stand of the petitioners that the properties purchased by them in their own names in fact are the properties belonging to the Society and the Schools, which stand of the petitioners also lends support from the language used in Section 18 of the Act of 2002 supra.

Furthermore, in this regard, the stand taken by the official respondents in their reply filed to CRM(M) 28/2020 cannot also be overlooked which provide that the most of the allegations during the course of enquiry held under enquiry no. 214/2018 were not proved on the face of evidence both orally and documentary provided by the petitioners

notwithstanding the assertion in the said objections that information with regard to the trustees of the school was found in conflict with the information received from the Registrar of the Societies of J&K which conflict of information, even if, taken to be true cannot per-se by any sense of imagination said to be constituting any offence much less those alleged by the complainants in the complaints as such alleged conflict in the records of the Society may be a breach or violation of the provisions of the Jammu and Kashmir Societies Registration Act and under the said Act any such breach would not constitute any offence covered under the Penal Code.

Perusal of the record manifestly tends to show that the complainants have successively filed complaints against the petitioners on the same set of allegations, be it before the Chief Judicial Magistrate, Srinagar, Inspector General of Police, SSP Crime Branch, Divisional Commissioner, Kashmir, Director Industries and Commerce Kashmir, Registrar under Societies and Registration Act, Kashmir, amongst which two complaints and actions initiated thereupon came to be quashed by this Court on 09.09.2021 while deciding WP(C) 803/2020 and WP(C) 901/2020.

Law is no more res-integra and is settled by the Apex Court in cases titled as **“Tarak Dash Mukharjee & Ors V. State of Uttar Pradesh & Ors** passed in Criminal Appeal No. 1400 of 2022 on 23.08.2022 and **“Krishna Lal Chawla and Ors Vs. State of U.P and Anr.”** reported in 2021(5) SCC 435 and **“T. T. Antony Vs. State of Kerela”** reported in 2001 (6) SCC 181 , that filing of the multiple criminal proceedings by some person against the same accused for the same alleged offences is prohibited and getting an accused entangled in multiple criminal proceedings in same alleged offences would be an abuse of process of law and as such, will not stand the scrutiny of the Article 21 and 22 of the Constitution.

It has also been the consistent view of the Apex Court and this Court and is a settled canon of law that power under Section 482 CrPC can be exercised in order to prevent the abuse of process of law.

The instant cases are glaring example of such an abuse of process of law taken recourse to by the complainants/respondents by filing successive complaints against the petitioners not only setting criminal law into motion but also involving administrative/executive authorities therein. The entire exercise undertaken by the complainants/respondents herein against the petitioners seemingly is not only unfair but patently tainted with malafide motive aimed at to abuse the process of law with a view to harass the petitioners and same as such cannot be overlooked by this Court. In this Court's quest for doing justice while allowing the instant petitions and quashing the impugned complaints including the proceedings initiated thereupon, the complainants/respondents are thus, liable to be burdened with costs to be payable to the petitioners. Accordingly, petitions are allowed and consequently impugned complaints and proceedings initiated thereupon are quashed and an amount of Rs. 50,000/- is imposed as costs upon the complainants/respondents herein to be payable to the petitioners within eight (8) weeks hereafter.

Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

07.02.2023

Ishaq

Whether approved for reporting Yes