

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

Reserved on : 05.05.2022

Pronounced on : 12.05.2022

WP(C) No. 821/2022

CM No. 2035/2022

Ajay Kumar Agarwal

...Petitioner(s)/Appellant(s)

Through: Mr. Jahangir Iqbal Ganaie, Sr. Advocate, with Mr. Murfaad
 Naseem, Advocate.

Vs.

Union Territory of JK and Ors.

...Respondent(s)

Through: Mr. Sajad Ashraf, Government Advocate.

CORAM:

HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

01. A short but an important question of vital importance has arisen for determination in this petition.

“Whether Investigating Officer is legally bound to accept and consider the documents or other things produced by the accused which are relevant, necessary or desirable for and have crucial bearing on the investigation of a criminal case.”

Factual Matrix.

02. The question has arisen out of following factual matrix. The Deputy Inspector General of Police, South Kashmir, Anantnag, received a letter dated 13th May, 2019, to the effect that an office in the name of “Host and Finance” is being run at K.P. Road opposite Car Plaza by the petitioner, who is involved in instituting fake complaints in different courts of District Anantnag and Kulgam, against some persons residing outside the Union Territory of Jammu and Kashmir. In the letter, it was alleged that petitioner had established an office and was exploiting his employees as a front for filing these false

complaints. On the basis of these false and frivolous complaints, the petitioner would obtainailable warrants for using them for extortion of money from the intended targets. On the basis of this information, FIR. No. 69/2019 was registered at Police Station Saddar, Anantnag, under Section 420, 467 and 468 RPC. Initially the investigation was conducted by the In-charge of the Police Station concerned, but later on Special Investigation Team (SIT) headed by Deputy Superintendent of Police was constituted. Upon the completion of investigation, final report was laid by the SIT before the competent court of jurisdiction on 14th September, 2021. It appears that while the trial was pending before the court, In-charge Police Station Saddar, Anantnag, filed an application before the competent Authority i.e., Chief Judicial Magistrate, Anantnag, pleading therein that some new facts had surfaced and, therefore, the police had embarked upon further investigation in FIR No. 69/2019 in terms of Section 173 (8) of the Code of Criminal Procedure.

03. While the further investigation in the matter was going on, the petitioner claims to have approached the Investigating Officer with a request to consider some documentary evidence in his possession, which, as per the petitioner, was relevant and germane to arriving at the truth. The petitioner claims to have projected before the Investigating Officer that he is not involved in instituting any false complaint for extortion of money rather the petitioner's company has filed cases only against the persons, who were made the payments through bank transfers. The grievance of the petitioner as projected in this petition is that the refusal of the Investigating Officer to receive and consider the documentary evidence in his possession has deprived the petitioner of his right to prove his innocence before the Investigating Officer.

Arguments.

04. Mr. Jahangir Iqbal Ganaie, learned Senior Counsel, appearing for the petitioner, submits that though his case does not strictly and technically fall under Section 91 of the Code of Criminal Procedure, yet having regard to the object of fair investigation which is always aimed at arriving at the truth, the refusal by the Investigating Officer

to take on record and consider the documents produced by the petitioner during the course of investigation takes away his right to fair trial. He argues that fair and impartial investigation is *sin qua non* of a fair trial and denial of this right directly offends Article 21 of the Constitution of India. It is argued that the accused may not, as a matter of right, be entitled to produce evidence in his defense before the Investigating Officer, but nothing prevents the Investigating Officer to have a look at the document or other relevant material produced by the accused if same is relevant and germane to the arriving at truth. Placing strong reliance upon Article 21 of the Constitution of India, it is argued by Mr. Jahangir Iqbal that refusal by the Investigating Officer to even look into the relevant documentary evidence produced by the accused, which may help the Investigating Officer to reach at a fair and just conclusion in the investigation takes away fair trial right of the accused. It is submitted that fair and impartial investigation alone can ensure fair trial of the accused and the fair trial right of the accused has already been held as concomitant of Article 21 of the Constitution of India.

05. *Per contra*, Mr. Sajad Ashraf, learned Government Advocate, appearing for the respondents submits that the Hon'ble Supreme Court has cautioned in various Judgments that the power of investigation in the cognizable offences vested in the Police Officer is not to be interfered with by the court. The Investigating Officer should be left free to chalk out the course of investigation in the manner he deems it fit and appropriate. Reliance is placed by Mr. Sajad Ashraf on the following Judgments: -

- i. *State of Bihar vs. JAC Saldenna reported in AIR 1980 SC 226.*
- ii. *Sakiri Vasu vs State of Utter Pradesh reported in 2008 (2) SCC 409.*
- iii. *CBI vs. Rajesh Gandhi reported in 1996 (11) SCC 253.*
and;
- iv. *Union of India vs. Prakash Hinduja report in AIR 2003 SC 2612.*

06. Mr. Sajad Ashraf sums up his arguments by submitting that the scheme of the Code of Criminal Procedure does not confer any right on the accused to produce documents or other material relevant for

his defense during the course of investigation and as cautioned by the Hon'ble Supreme Court in the case of ***P Chidambaram vs. Directorate of Enforcement reported in 2019 (9) SCC 24***, there is well defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the Investigating Agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation, it would affect the normal course of the investigation. The Investigating Agency should be left free to proceed in its own manner without any unnecessary interference by the courts. He, thus, argues that the Investigating Officer has committed no illegality or infraction of law by refusing to entertain the documents claimed to have been produced by the accused before him during the investigation.

Analysis and discussion.

07. Having heard learned counsel for the parties and perused the material on record, it is necessary to remind ourselves of the object of investigation by the police in a criminal case. The expression “investigation” is defined in Section 2 (h) of the Criminal Procedure Code, 1973, [“the Code”] and reads as under: -

Section 2 (h). *“Investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.”*

08. From plain reading of the definition of investigation, it is evident that the primary object of the investigation under the Code is the collection of evidence in relation to the allegations under investigation. Power of the police to investigate and procedure for investigation is delineated in Chapter XII of the Code (Section 154 to Section 176). Indisputably, any investigation into the crime should be fair and impartial and in accordance with law. It is only a fair and impartial investigation that can provide foundation of a fair trial. Fair investigation and the fair trial are as much necessary for the accused as these are for the victims and the public at large. The public at large

too has its stakes in the fair, impartial and unbiased investigation and trial against the offender of the crime. It is, thus, the requirement of both Article 14 and 21 of the Constitution of India that the investigation conducted by the police in the crimes is fair, impartial and unbiased leading to the conduct of a fair trial against the offender of the law. Article 21 enshrines and guarantees precious right of life and personal liberty to a person which he can only be deprived of on following the procedure established by law. The procedure established by law ought to be a just and fair procedure and which meets the requirement of rule of law implicit in Article 14 of the Constitution of India. Assurance of a fair trial to the accused is first imperative of dispensation to criminal justice. It is, thus, the primary duty of the Investigating Officer to conduct proper, fair, impartial and unbiased investigation aimed only at finding out the truth.

09. In the *State of Bihar vs. P.P.Sharma reported in 1992 Supp (1)*

SCC 222, the Hon'ble Supreme Court in paragraph 48 held thus:

48. "From this perspective, the function of the judiciary in the course of investigation by the police should be complementary and full freedom should be accorded to the investigator to collect the evidence connecting the chain of events leading to the discovery of the truth, viz., the proof of the commission of the crime. Often individual liberty of a witness or an accused person are involved and inconvenience is inescapable and unavoidable. The investigating officer would conduct in-depth investigation to discover truth while keeping in view the individual liberty with due observance of law. At the same time, he has a duty to enforce criminal law as an integral process. No criminal justice system deserves respect if its wheels are turned by ignorance. It is never his business to fabricate the evidence to connect the suspect with the commission of the crime. Trustworthiness of the police is the primary insurance. Reputation for investigative competence and individual honesty of the investigator are necessary to enthuse public confidence. Total support of the public also is necessary."

With regard to the necessity of a fair and impartial investigation into a criminal offence, the Hon'ble Supreme Court in ***Babubayi vs. State of Gujrat report in 2010 (12) SCC 254*** in paragraph 32 held as under:-

32 “The investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive. It is also the duty of the Investigating Officer to conduct the investigation avoiding any kind of mischief and harassment to any of the accused. The Investigating Officer should be fair and conscious so as to rule out any possibility of fabrication of evidence and his impartial conduct must dispel any suspicion as to its genuineness. The Investigating Officer “is not merely to bolster up a prosecution case with such evidence as may enable the court to record conviction but to bring out the real unvarnished truth”. (Vide *R.P. Kapur Vs. State of Punjab* AIR 1960 SC 866; *Jamuna Chaudhary & Ors. Vs. State of Bihar* AIR 1974 SC 1822; and *Mahmood Vs. State of U.P.* AIR 1976 SC 69).

No less important are the observations of the Hon’ble Supreme Court in the case of Vinay ***Tyagi vs. Irshad Ali reported in 2013 (5) SCC 762***, the Hon’ble Supreme Court in paragraph 48 of the Judgment laid down as under: -

48. “What ultimately is the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.”

What is held in the case of ***Amitbhai Anil Chandra Shah vs. CBI reported in 2013 (6) SCC 348*** is equally relevant and is, therefore, reproduced here under:-

58.9 “Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the

fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second F.I.R to meet the ends of justice.”

58.10. *“The investigating officers are the kingpins in the criminal justice system. Their reliable investigation is the leading step towards affirming complete justice to the victims of the case. Hence, they are bestowed with dual duties i.e., to investigate the matter exhaustively and subsequently collect reliable evidences to establish the same.”*

10. From the conspectus of the judicial opinion, it is axiomatic that the essence of criminal justice system is to reach the truth. The underlying principle of criminal jurisprudence is that the accused is presumed to be innocent till proven guilty beyond reasonable doubt in a trial conducted according to the procedure prescribed by law and which procedure is just and fair and in consonance with Article 14 of the Constitution. Fair, impartial and transparent criminal investigation is *sin qua non* for ensuring fair trial for the accused. The Investigating Officer is a kingpin in the criminal justice system and fair, impartial and reliable investigation by him is most important step towards affirming complete justice to the victim/victims of the crime as also to assure fair trial rights of the accused. It is with this object in view the Investigating Officer is bestowed with enormous powers and equally onerous duties to dispassionately investigate the matter and reach the truth by collecting reliable evidences for and against the allegations.

11. The investigation generally consists of following important steps.

- i. *Proceeding to the spot immediately on receipt of the information to ascertain facts and circumstances of the case.*
- ii. *Discover and arrest the suspected offender if required.*

- iii. *Collection of evidence relating to the commission of offence, which may include collection of documentary and oral evidence to conduct search of places and seizure of things or documents relevant for investigation. and;*
- iv. *Formation of the opinion as to whether on the basis of evidence collected documentary and oral, there is a case made about against the accused to put him before the Magistrate for trial. Commission of crime is affront to the peaceful existence of the society and, therefore, society has vital interest and genuine stake in the outcome of investigation undertaken by the police in the commission of crime.*

12. As noted above, a fair investigation and fair trial are as much necessary for the victim and the society as it is necessary for the accused. The Investigating Agency has, therefore, ascertained legal and social obligation to exhaust all its resources, experience and expertise to unearth the truth and bring the perpetrators of the crime to book. I am in agreement with Mr. Sajad Ashraf, learned Government Advocate, appearing for the respondents, that there ought to be minimal interference by the courts in the investigation by the police. I respectfully bow to the observations made by the Hon'ble Supreme Court in the case of ***P Chidambaram*** (supra) that it must be left to the Investigating Agency to proceed in its own manner in interrogation of the accused and that the course of investigation to be adopted in a particular case should be left to the discretion and wisdom of the Investigating Agency.

13. Indeed, the Investigating Officer must enjoy reasonable amount of autonomy and freedom in the matter of investigation and the interference by the courts should be minimalistic restricted to the only cases where the Investigating Officer goes astray and conducts the investigation in a manner which is unknown to law or is patently illegal and contrary to Statute.

14. During the course of arguments, the attention of this Court was also invited to Section 91 of the Code to submit that even under Section 91, In-charge of Police Station investigating a matter is empowered

to call upon by a written order a person in whose possession or power any document or thing which he considers necessary or desirable for the purposes of investigation, requiring him to attend and produce it. It is, thus, contended that although the power to summon a person to produce a document or thing relevant for the purposes of investigation is conferred on the Police Officer, yet implicit in such power is a duty of the Police Officer to procure such document from any person provided it is necessary and desirable for the purposes of any investigation. Section 91 of the Code reads thus;

Section 91. “Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

15. Section 91 of the Code has on several occasions fallen for consideration before the Hon'ble Supreme Court and various other High Courts in the context of right of the accused against self-incrimination guaranteed by Article 20 of the Constitution of India. It is now clarified and held that the expression “person” used in the Section 91 does not include the “accused”. It is held that accused cannot be called upon to produce any evidence including documentary evidence which is incriminatory in nature for an accused is protected against becoming a witness against himself by Article 20 of the Constitution of India. Briefly put, it can be conclusively held that the power of the Officer In-charge of Police Station to summon any person to attend and produce a document does

not extend to summoning accused to produce a document or other thing which has the effect of incriminating him in any manner.

16. Having gone through the language of Section 91 of the Code and interpreting it in the light of Article 20 of the Constitution of India, I am of the considered view that under Section 91, the Officer In-charge of Police Station will be well within its rights to direct a person including an accused to attend and produce any document or other thing as he considers necessary or desirable for the purposes of any investigation subject only to the condition that such document or thing should not be incriminating to the accused. There is nothing in Section 91, which prohibits or puts any embargo or clog on the powers of the In-charge of a Police Station to summon the accused to attend and produce a document or thing which is not incriminatory to the accused, but may be necessary or desirable for the purposes of investigation of the offence.

17. That apart, having regard to the predominant object of investigation being unearthing of the truth by proceeding to collect the evidence for and against the allegations in a just, fair, impartial and unbiased manner, I am of the considered view that any documentary or oral evidence produced before the Investigating Officer during the course of investigation by any person including the accused which is relevant, necessary or desirable for the purposes of investigation cannot be thrown out by the Investigating Officer by seeking shelter under Section 91 of the Code. As stated above and is reiterated here that fair investigation and fair trial is not only necessary for the accused but it is equally necessary for the victim and the society which has stakes in ensuring that the real perpetrator of crime is brought to book. It is, thus, obligatory on the Investigating Officer to collect the evidences, oral as well as documentary, from all possible sources and such sources may include an accused. True it is, an accused is not entitled to produce evidence in defense to the allegations under investigation, but if the accused has in his possession documents or other material of sterling quality, which is relevant, necessary or desirable for the purposes of investigation, the Investigating Officer cannot shut his eyes to such material. It needs

no emphasis that Investigating Officer being kingpin and master of the course of investigation, he would choose in a particular case, is not bound to rely upon all or any of the documents or material produced by the accused of his own.

18. What is, however, required of the Investigating Officer is to accept such documents or material and formulate his opinion as to whether these are or any of these is relevant, necessary or desirable for the purposes of investigation or not. He may not take such document or material into consideration if he finds the same having no relevance or nexus with the investigation in any manner. He may even reject to consider the same on the ground that these documents or material are, otherwise, not germane to investigation.

Conclusion.

19. In view of the foregoing analysis and the discussion made above, I am of the considered opinion that the accused may not as of right claim the production of any document or thing in defense before the Investigating Officer, but if he brings to the notice of the Investigating Officer any documentary evidence or material other than the incriminating document or material, the Investigating Officer cannot and should not shut his eyes to such document or material if the same is relevant, necessary or desirable for the purposes of investigation. I have arrived at this conclusion by the reading Section 91 of the Code of Criminal Procedure in the light of the Article 21 of the Constitution of India. It is the requirement of fair trial that there is fair investigation and there could be no fair investigation if the Investigating Officer does not take into consideration all relevant evidences which are relevant, necessary or desirable for the investigation. Investigation into the allegations constituting an offence would call for collecting evidence both for and against the allegations. The Code of Criminal Procedure does not envisage one sided investigation aimed at collecting material only to substantiate the allegations and ignoring the documents and other things which expose the lies and falsehood of the allegations. For the investigation to be fair, impartial and unbiased, it is necessary for the Investigating Agency to collect all

relevant evidences with regard to the facts and circumstances of the case.

20.For the foregoing reasons, this petition is allowed. The Investigating Officer conducting further investigation in FIR No. 69/2019 shall accept the documents sought to be produced by the petitioner and consider the same only to the extent these are relevant, necessary or desirable for the just and fair investigation of the case. It is, however, left to the discretion and investigative wisdom of the Investigating Officer to rely upon or not to rely upon the documents so produced by the petitioner.

21.**Disposed** along with connected CM(s) in the aforesaid terms.

(SANJEEV KUMAR)
JUDGE

SRINAGAR
12.05.2022
Shamim Dar

Whether the Judgment is reportable: *Yes/No*
Whether the Judgment is speaking: *Yes/No.*