

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

CRM(M) No.265/2022

MEHBOOB ALI

...PETITIONER(S)

Through: Mr. Umar Mir, Advocate.

Vs.

NISAR FATIMA

....RESPONDENT(S)

Through: Mr. Showkat Ali Khan, Advocate.

CORAM:HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

(ORDER)
21.02.2024

1) The petitioner has filed the instant petition for quashing of the proceedings of the criminal complaint titled “**Nisar Fatima vs. Mehboob Ali**” pending before the Court of Judicial Magistrate 1st Class, Pulwama, (hereinafter referred to as ‘the trial court’) and also order dated 30.03.2022, by virtue of which the learned trial court has issued the process against the petitioner.

2) The petitioner, husband of the respondent, claims to have filed a suit for restitution of conjugal rights against the respondent/wife and the respondent/wife too has filed a suit for cancellation of the marriage agreement executed between the parties. It is stated that while the above-mentioned litigations were pending between the parties, the respondent, at the behest of her family members, filed a false and flimsy complaint before the learned trial court which referred the same to the concerned police for investigation under Section 202 of Cr. P. C.

After the report in terms of Section 202 of Cr. P. C was submitted by the police, the learned trial court vide order dated 30.03.2022, issued process against the petitioner for commission of offences under Section 323 and 354 IPC.

3) The petitioner has impugned the proceedings on the ground that the learned trial court could not have issued the process for commission of offence under Section 354 of IPC when the allegations as mentioned in the complaint did not make out a case for issuance of process under Section 354 IPC. It is also stated that the learned trial court has not recorded statement of any witness of the complainant in support of the complaint at the time of presentation of the complaint and it has been wrongly mentioned in the order dated 19.03.2022 that the statement of the witness has been recorded.

4) Learned counsel for the petitioner has submitted that the perusal of the contents of the complaint reveals that no offence under Section 354 IPC is made out against the petitioner. He further submitted that the learned Magistrate did not record statement of any witness prior to passing of order dated 30.03.2022 , by virtue of which investigation under Section 202 of Cr. P. C was ordered.

5) *Per contra*, Mr. S. A. Khan, learned counsel for the respondent very fairly submitted that the offence under Section 354 IPC is not made out but offence under Section 323 IPC is made out from the averments made in the complaint and there is nothing wrong in order

dated 30.03.2022 whereby the process has been issued for commission of offence under Section 323 IPC.

6) Heard learned counsel for the parties and perused the trial court record.

7) The perusal of the complaint reveals that the respondent moved an application for initiation of criminal proceedings/lodging of FIR against the petitioner alleging therein that when she had come to the Court on 19.03.2022, the petitioner thrashed her, as a result of which she got injured and he also slapped the respondent in public gaze. The learned trial court recorded the statement of the respondent who was identified by her counsel and the trial court thereafter in its wisdom deem it proper to refer the complaint to SHO, P/S Pulwama for investigation under Section 202 of Cr. P. C. The SHO, P/S Pulwama, submitted a report before the trial court and by placing reliance upon the said report, the trial court issued the process against the petitioner for commission of offences under Section 323 and 354 IPC. As rightly conceded by the learned counsel appearing for the respondent, from the averments made in the complaint, no offence under Section 354 IPC is made out but offence under Section 323 IPC is made out as the respondent has categorically stated that she was thrashed and slapped in public gaze by the petitioner when she had come to attend the proceedings.

8) The trial court record reveals that before the matter was referred for investigation under Section 202 of Cr. P. C, the statement of the

complainant was recorded by the learned Magistrate, as such, there is no force in the contention raised by the petitioner.

9) For the foregoing reasons, this Court is of the considered view that order dated 30.03.2022, so far as issuance of process for commission of offence under Section 354 IPC is concerned, the same is not sustainable in the eyes of law and, accordingly, the same is quashed whereas the order impugned to the extent of issuance of process under Section 323 IPC is upheld. The petition is, accordingly, disposed of. The interim direction, if any, shall stand vacated. The trial court shall proceed ahead with the proceedings in accordance with law.

10) A copy of this order be sent to the learned trial court for information and compliance.

Srinagar;
21.02.2024
“Bhat Altaf-Secy”

(Rajnesh Oswal)
Judge