

**Sr. No. 02**

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No.: CRMC No. 67/2013
c/w
CRMC No. 15/2013

Reserved on: - 12.03.2026
Pronounced on:- 01.04.2026
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*Whether the operative part
or full judgment is pronounced* **Full**

Kali Dass and Anr.

.... Petitioner(s)

Through: - Mr. O P Thakur, Sr. Advocate with
Mr. R K S Thakur, Advocate.
Ms. Anandita Thakur, Advocate
(in CRMC No. 67/2013).
Mr. Aseem Kumar Sawhney, Sr.
Adv. (**Th. Virtual Mode**).
Ms. Tehseena Bukhari, Advocate.
Mr. Sarfaraz Ahmed, Advocate.
Mr. Piyush Behal, Advocate.
Mr. Dheeraj Singh, Advocate.
Mr. Harsh Singh, Advocate in
(CRMC No. 15/2013)

V/s

State of J&K.

.... Respondent(s)

Through: - Mr. P D Singh, Dy. AG.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

1. These two petitions arise out of a common order dated 15.12.2012 passed by Principal Sessions Judge, Jammu, hereinafter referred to as "the trial Court", in a case arising out of FIR No. 31/2006 registered at Police Station, Peer Mitha, Jammu, for commission of offences under Sections 3/7 of the Essential Commodities Act and Sections 419, 420, 467, 468 and 471 RPC. By virtue of the impugned order, the petitioners came to be discharged for offences



under Sections 467 and 471 RPC, but were directed to be charged for offences under Sections 419, 420, 468, 120-B RPC and Sections 3/7 of the Essential Commodities Act. Aggrieved thereof, the petitioners have questioned the legality, propriety and correctness of the order of charge.

2. The principal grounds urged in challenge are that the order impugned is contrary to facts and law; that the petitioners have been falsely implicated; that they have been roped in subsequently only on the basis of statements of co-accused; that there was no legal material before the trial Court to frame charges against them; and that the petitioners have been made accused in relation to what is essentially the same transaction already forming subject matter of another FIR registered by another police station, which, according to them, was not legally permissible.
3. The case of the petitioners, in brief, is that the prosecution has failed to place on record any material to show that allotment order No. 1384-87/AD/CAPD/J-100-05 dated 16.05.2006 was prepared by any of them. It is contended that the said allotment order pertains to FIR No. 91/2006 of Police Station, Satwari, and not to the present FIR No. 31/2006 of Police Station, Peer Mitha. It is further submitted that in the list of allotment orders annexed with the charge-sheet in the present case, the aforesaid allotment order dated 16.05.2006 is not specifically reflected as the foundational forged document prepared by the petitioners. According to the petitioners, the prosecution has failed to identify with certainty the particular false document attributed to each of them.



4. It is also contended that petitioner Kali Dass, at the relevant time, was serving as Senior Assistant in the CAPD Department; petitioner Swaran Singh was working as Chowkidar; and petitioner Bal Krishan Sharma was functioning as Assistant Director in the said Department. According to learned counsel for the petitioners, mere employment in the CAPD Department cannot be made a basis for fastening criminal liability, unless there is cogent material showing participation in preparation, issuance or use of forged allotment orders. The argument is that no such material has been collected during investigation.
5. The factual matrix, as emerging from the record, is that Police Station, Satwari had registered FIR No. 91/2006 under Sections 3/7 of the Essential Commodities Act and Sections 419, 420, 467, 468 and 471 RPC, when it was found that one Gurmeet Singh, licence-holder of a kerosene oil sale outlet, was indulging in black-marketing of kerosene oil meant for public distribution. A raid conducted at his premises resulted in recovery of 600 litres of kerosene oil in three barrels, which, according to the police, was in excess of the allotted quota of 300 litres.
6. During investigation of the said case, it surfaced that the kerosene oil had been decanted at the outlet of the said Gurmeet Singh on 14.06.2006 by Tanker No. JK06G-9394 driven by Kesar Singh. The tanker belonged to M/S Devi Dass Gopal Krishan Warehouse, Jammu, a stockist of kerosene oil of Indian Oil Corporation. Upon arrest of Gurmeet Singh and scrutiny of the record, the police found that the kerosene oil had allegedly been released vide allotment



order No. 1384-87/AD/CAPD/J-100-05 dated 16.05.2006, which came to be suspected as fake.

7. It further appears that the senior police officer supervising the jurisdiction of Police Station, Satwari informed the Senior Superintendent of Police, Jammu, that kerosene oil was being sold in black market by various sale depots in Jammu city on the strength of fake allotment orders. Consequently, Police Station, Peer Mitha registered FIR No. 31/2006 for offences under Sections 3/7 of the Essential Commodities Act and Sections 419, 420, 467, 468 and 471 RPC, in relation to the larger racket concerning preparation and circulation of fake allotment orders.
8. During investigation of FIR No. 31/2006, it was alleged that employees of M/S Devi Dass Gopal Krishan disclosed that fake allotment orders had been got prepared with the active connivance of officials of the CAPD Department. It is also the case of the prosecution that fake allotment orders were being used by stockists to obtain release of kerosene oil, which was then sold in black market, thereby defeating the object of public distribution under the statutory control regime.
9. The record further reveals that the co-accused Swarn Singh is stated to have disclosed during investigation that co-accused Rattan Lal and Keshav Sawhney had faked a large number of allotment orders with the connivance of the then Assistant Director, namely Bal Krishan Sharma. Likewise, petitioner Kali Dass is shown to have stated under Section 161 Cr.P.C. that the co-accused, namely, Keshav Sawhney and Rattan Lal, who were associated with the



Kerosene Oil Dealers' Association, used to produce photocopies of various orders and that the then Assistant Director had asked him to sign printed allotment orders, which he signed under directions of the superior officer. He is also shown to have stated that later he found that such orders were photocopies, tampered with and illegally used for fake allotment of kerosene oil.

10. It has also come in the investigation that typing work of such allotment orders was allegedly being undertaken in the office of M.K. Enterprises, Chowk Chaubtra, Mubarak Mandi, owned by one M.K. Koul. Statement of PW-Sanjay Sharma indicates that Keshav Sawhney and Rattan Lal used to come regularly for typing allotment orders of kerosene oil for the last several months and he used to charge Rs.10/- per page, though according to him, he had no knowledge that the same were forged documents.
11. The prosecution has also relied upon the statement of PW-Omesh Sharma, an employee of M/S Devi Dass Gopal Krishan, who stated that allotment order bearing No. 1384-87/AD/CAPD/J-100-05 dated 16.05.2006 had been produced by co-accused Keshav Sawhney. He further stated that when he and another employee suspected the genuineness of the order, the photocopy thereof was shown to Kali Dass and Swaran Singh, employees of the CAPD Department, who informed them that the order was genuine, whereafter kerosene oil was issued on that basis.
12. Upon completion of investigation, the petitioners along with other accused came to be challaned before the Court of Special Railway Magistrate, Jammu, for commission of offences under Sections 3/7



of the Essential Commodities Act and Sections 419, 420, 467, 468, 471 and 120-B RPC. The petitioners had remained on bail during investigation. The learned Magistrate committed the case to the Court of Sessions, that trial Court, after consideration of the material on record, discharged the petitioners for offences under Sections 467 and 471 RPC, but framed charges against them for offences under Sections 419, 420, 468, 120-B RPC and Sections 3/7 of the Essential Commodities Act. It is this order, which is under challenge in the present petitions.

- 13.** Learned counsel for the petitioners argued that not an iota of evidence has been collected during investigation to show that any forged allotment order was actually prepared by the petitioners. It is contended that the trial Court failed to notice that the allotment order dated 16.05.2006 is the subject matter of FIR No. 91/2006 of Police Station, Satwari, and that the present charge-sheet in FIR No. 31/2006 does not clearly spell out as to which particular forged order was authored or fabricated by the petitioners.
- 14.** It is next contended that petitioner Bal Krishan Sharma has been implicated solely on the basis of statements of co-accused recorded by the police under Section 161 Cr.P.C., which are neither substantive evidence nor legally admissible against a co-accused for the purpose of framing charge. It is urged that statements of co-accused, unless amounting to legally admissible confessions within the framework of the Evidence Act, cannot be used to implicate another accused. It is submitted that the trial Court failed to



appreciate this settled principle and proceeded on conjectures and assumptions.

15. Learned counsel further submitted that PW-Omesh Sharma and Chamail Singh, both employees of the stockist firm, in fact stated that when the questioned allotment order was brought from the office of M/S Devi Dass Gopal Krishan, they became suspicious and approached the CAPD Department for verification, where they were told by petitioners Kali Dass and Swaran Singh that the order was genuine. According to the petitioners, even if this statement is taken at face value, it may at best amount to an act of verification or misrepresentation, but by no stretch establishes preparation of forged allotment orders or conspiracy to fabricate them.
16. On the other hand, learned counsel for the respondent-State submitted that the trial Court has rightly passed the impugned order. According to the respondent, the material collected during investigation discloses a prima facie case showing active connivance of the petitioners with stockists and dealers in preparation, verification and use of fake allotment orders. It is submitted that at the stage of framing of charge, the Court is not required to meticulously appreciate the evidence as if finally determining guilt, but only to see whether strong suspicion or grave suspicion arises from the material collected.
17. It is also submitted by the respondent that the learned trial Court has already sifted the material and found that there was no sufficient ground for framing charge under Sections 467 and 471 RPC, which is why the petitioners were discharged for those



offences. According to the learned State counsel, the impugned order demonstrates due application of mind, inasmuch as the learned trial Court separated the offences not made out from those for which prima facie case did exist.

18. In rebuttal, learned counsel for the petitioners submitted that the CAPD Department had, by order dated 04.01.2006, directed all stockists of kerosene oil not to act upon photocopies of allotment orders. Therefore, according to the petitioners, even if a forged photocopy was used in the market, the petitioners cannot be blamed unless there is direct evidence of their participation in the fabrication or intentional use thereof.
19. I have heard learned counsel for the parties at length, perused the impugned order, the charge-sheet, the statements collected during investigation and the material produced on record.
20. The scope of interference by this Court, while exercising revisional jurisdiction against an order framing charge, is well circumscribed. It is trite that at the stage of charge, the Court is not required to meticulously evaluate the evidence as if conducting a full-fledged trial. The test is whether the material placed on record, if taken at its face value, discloses the existence of a prima facie case or at least raises a grave suspicion against the accused. The Court is not to weigh the sufficiency of evidence for conviction but only to examine whether there exists a strong suspicion which, if unrebutted, would warrant the accused being put on trial. This principle stands authoritatively settled in “*State of Bihar v. Ramesh Singh*, AIR (1977) 4 SCC 39”, wherein it was held that even strong



suspicion founded on material before the Court is sufficient for framing charge.

21. It is equally settled that while exercising powers of discharge or framing of charge, the Court must sift the material to the limited extent necessary to determine whether the allegations are groundless. Where the material gives rise to grave suspicion, the Court would be justified in framing the charge; conversely, where two views are possible and the material gives rise only to mere suspicion, the accused would be entitled to discharge. However, the threshold at this stage is intentionally low, so as not to stifle legitimate prosecution at its inception. The principles governing this stage have been succinctly laid down in “*Union of India vs. Prafulla Kumar Samal*, AIR 1979 SC 366”, wherein the Supreme Court delineated the contours of judicial scrutiny at the stage of charge.
22. In the present case, the argument of the petitioners that there is “not an iota of evidence” against them is, upon a careful scrutiny of the record, found to be an overstatement. The material collected during investigation cannot be said to be wholly bereft of incriminating circumstances. The seizure of as many as twenty-five allotment orders, coupled with the forensic indication that at least one such allotment order was fake, prima facie suggests that the case is not confined to a singular aberration but points towards a systematic modus operandi involving preparation and use of forged allotment orders. At this stage, such material is sufficient to raise a



presumption, within the meaning of law governing framing of charge.

23. The statement of PW-Omesh Sharma assumes significance at this stage. According to the prosecution, when suspicion arose regarding the genuineness of the allotment order dated 16.05.2006, the same was shown to petitioners Kali Dass and Swaran Singh, who, being officials of the CAPD Department, represented the same to be genuine, whereafter kerosene oil was released. If this material is taken at face value, it prima facie indicates that the said petitioners were not passive spectators but played a role in facilitating the use of a forged document. Whether such conduct ultimately constitutes culpability is a matter for trial; however, at this stage, the Court cannot undertake a meticulous evaluation of credibility. As reiterated in "*Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460*", the Court must refrain from examining the sufficiency or reliability of evidence and should only see whether the allegations disclose an offence.

24. Further, the statements indicating that forged allotment orders were being repeatedly typed outside the department by private individuals, and that such orders were similar in nature and used over a period of time, lend support to the prosecution version that the activity was organized and not isolated. The allegation of a broader conspiracy involving private persons and departmental officials, therefore, cannot be said to be inherently implausible at this stage. It is settled that conspiracy is seldom proved by direct evidence and may be inferred from surrounding circumstances, as



recognized in “*State (NCT of Delhi) Vs. Navjot Sandhu*”, AIR 2005 SC 3820”.

25. The principal thrust of the petitioners’ challenge relates to the implication of petitioner Bal Krishan Sharma on the basis of statements recorded under Section 161 Cr.P.C. It is correct that such statements are not substantive evidence. A statement made to a police officer, if in the nature of a confession, is rendered inadmissible by virtue of Sections 25 and 26 of the Evidence Act, except to the limited extent permissible in law. The evidentiary limitations of such statements have been consistently emphasized, including in “*Kashmira Singh vs. State of Madhya Pradesh, AIR 1952 SC 159*” where it was held that confession of a co-accused is not substantive evidence and can only lend assurance to other independent evidence.
26. This Court is in respectful agreement with the proposition that a co-accused cannot be implicated solely on the basis of a police statement of another accused, particularly, when such statement is sought to be treated as substantive evidence. However, the question that arises is whether, in the present case, the prosecution rests exclusively on such statements.
27. A careful reading of the charge-sheet reveals that the prosecution has not rested its case solely on statements under Section 161 Cr.P.C. There exists additional material pointing towards (i) existence of multiple forged allotment orders, (ii) their circulation and use, (iii) verification by departmental officials, and (iv) interaction between private accused and departmental authorities.



At the stage of charge, such material is sufficient to raise grave suspicion requiring adjudication at trial. The Supreme Court in “*Sajjan Kumar v. CBI, (2010) 9 SCC 368*”, has reiterated that where the material discloses grave suspicion, the Court should not discharge the accused merely because the evidence may not ultimately result in conviction.

28. It must be borne in mind that admissibility and probative value of evidence are matters for trial. At the stage of framing charge, the Court cannot exclude material merely because it may ultimately be found inadmissible, unless such inadmissibility is apparent on the face of the record. This position has been reaffirmed in “*Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijjaya, AIR 1990 SC 1962*”.
29. The argument that FIR No. 31/2006 is barred as a second FIR in view of the law laid down in “*T.T. Antony v. State of Kerala, (2001) 6 SCC 181*”, does not impress this Court. The prohibition against multiple FIRs applies only where the subsequent FIR relates to the same incident or occurrence forming the subject matter of the earlier FIR. The decisive test is the “*test of sameness*”.
30. In the case at hand, FIR No. 91/2006 pertains to a specific incident of black-marketing based on a particular allotment order, whereas FIR No. 31/2006 pertains to a larger conspiracy involving preparation and circulation of multiple forged allotment orders. The two FIRs, though connected, operate in distinct spheres of criminality. The distinction between “*same transaction*” and



“distinct conspiracy” has been clarified by the Supreme Court in “*Babubhai vs. State of Gujarat, 2010 AIR SCW 5126*”.

31. Therefore, the second FIR cannot be said to be legally impermissible. Rather, it falls within the permissible category where subsequent investigation reveals a wider conspiracy, justifying independent registration within territorial jurisdiction.
32. The submission of the petitioners regarding the departmental circular dated 04.01.2006 may be relevant for trial but does not demolish the prosecution case at the threshold. The defence sought to be projected cannot be examined in depth at this stage, as held in “*State of Orissa v. Debendra Nath Padhi, AIR 2005 SC 359*”, wherein it was held that defence material cannot ordinarily be considered at the stage of framing charge.
33. The contention that there is no direct evidence of preparation of forged allotment orders is equally untenable at this stage. Offences involving conspiracy and cheating are often proved through circumstantial evidence. Direct evidence is not a sine qua non for framing charge.
34. The learned trial Court has, in the considered opinion of this Court, exercised due judicial discretion by discharging the petitioners for certain offences while proceeding against them for others. This reflects proper application of mind and does not call for interference.
35. Viewed thus, this Court is satisfied that the material on record, taken at its face value, discloses a prima facie case and raises grave suspicion against the petitioners. The petitioners have failed to



demonstrate that the allegations are so inherently improbable or unsupported by material as to justify discharge at this stage. Petitions are, thus, *dismissed*. Interim direction, if any, shall stand vacated enabling the trial court to proceed with the trial in accordance with law.

(SANJAY PARIHAR)
JUDGE

JAMMU
01.04.2026
Ram Krishan

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| Whether the order is speaking? | Yes |
| Whether the order is reportable? | Yes |

