HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (C) No. 587/2021 c/w
CRM(M) No. 928/2024
CRM(M) No. 491/2026

Reserved on: 19.08.2026
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Whether the operative part or full judgment is pronounced:**Full**

WP (C) No. 587/2021

1. **Abdul Hamid,**
   S/o Late. Sh. Fakar Din
2. **Shabnam Kousar,**
   W/o Sh. Abdul Hamid
3. **Mohd. Haroon Hamid,**
   S/o Sh. Abdul Hamid
4. **Arousa Choudhary,**
   D/o Sh. Abdul Hamid
   All residents of Chowadhi, Jammu
5. **Shenaz Akhter,**
   S/o Abdul Gaffar
   R/o H.No. 87, Gujjar Nagar,
   Jammu

…..Petitioner(s)

Through: Mr. P.N. Raina, Sr. Advocate with Mr. J.A. Hamal, Advocate

Vs.

UT of Jammu and Kashmir,
Through Senior Superintendent of Police,
Anti-Corruption Bureau, Jammu

….. Respondent(s)

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

CRM(M) No. 928/2024

1. **Abdul Hamid, aged 59 years**
   S/o Late. Sh. Fakar Din
2. **Shabnam Kousar, aged 54 years**
   W/o Sh. Abdul Hamid
3. **Mohd. Haroon Hamid, aged 33 years**
   S/o Sh. Abdul Hamid
4. **Arousa Choudhary, aged 31 years**
   D/o Sh. Abdul Hamid
   All residents of Chowadhi, Jammu
5. **Shenaz Akhter, aged 47 years**
   S/o Abdul Gaffar
   R/o H.No. 87, Gujjar Nagar,
   Jammu

…..Petitioner(s)

Through: Mr. P.N. Raina, Sr. Advocate with
Mr. J.A. Hamal, Advocate

Vs.

1. **UT of J&K,**
   through Sr. Superintendent of Police,
   Anti-Corruption Bureau Jammu.
2. **Saleem Mohammad,**
   S/o Late Sh. Nawab Din,
   R/o H. No. 821-A, Gandhi Nagar, Jammu
3. **Atta Mohammad,**
   S/o Sain Mohd.
   R/o Bari Khad,
   Tehsil Bari Brahmana Samba
4. **Smt. Shakun Singh,**
   D/o Surjeet Singh,
   R/o Ratnu Chack, Jammu,
   A/P 18-D, U7V, Block-B,
   Shalimar Bagh, New Delhi.

….. Respondent(s)

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

CRM(M) No. 491/2026

1. Shakun Singh, Aged 61 years,
W/o Sh. Surjeet Singh,
R/o Ratnu Chack, Jammu,
A/P 18-D, U&V, Block-B,
Shalimar Bagh, New Delhi-110088

…..Petitioner(s)

Through: Mr. Rahul Raina, Advocate.

Vs.

1. **UT of J&K,**
   through Senior Superintendent of police,
   Anti-corruption Bureau, Jammu
2. **Saleem Mohammad**
   S/o Late Sh. Nawab Din,
   R/o H. No. 821-A, Gandhi Nagar, Jammu
3. **Atta Mohammad,**
   S/o Sain Mohd.,
   R/o Bari Khad,
   Tehsil Bari Brahmana, Samba
4. **Abdul Hamid,**
   S/o Late Sh. Fakar Din,
   R/o chowadhi, Tehsil Bahu, District Jammu
5. **Shabnam Kousar,**
   W/o Sh. Abdul Hamid,
   R/o Chowadhi, Tehsil Bahu, District Jammu
6. **Mohd. Haroon Hamid,**
   S/o Sh. Abdul Hamid,

R/o Chowadhi, Tehsil Bahu, District Jammu

7. **Arousa Choudhary,**
   D/o Sh. Abdul Hamid,
   R/o Chowadhi, Tehsil Bahu, District Jammu
8. **Shenaz Akhter,**
   S/o Abdul Gaffar,
   R/o H.No. 87, Gujjar Nagar,
   Tehsil and District Jammu.

….. Respondent(s)

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

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

JUDGMENT

1. The petitioners have assailed FIR No. 05/2021 dated 03.02.2021, registered by the Anti-Corruption Bureau, Jammu, under Section 5(1)(d) read with Section 5(2) of the J&K Prevention of Corruption Act, SVT. 2006 and Section 120-B RPC and consequent chargesheet, primarily on the ground that the prosecution proceeds on an erroneous interpretation of Section 121 of the J&K Land Revenue Act. According to them, Mutation Nos. 558, 559 and 564 were attested by the competent Revenue Officers in exercise of statutory jurisdiction during settlement/revision of the record of rights and continue to subsist. Their contention is that an order passed by a statutory authority in exercise of its adjudicatory jurisdiction cannot, merely because the investigating agency considers the exercise to be legally erroneous, furnish the basis for criminal prosecution.

2. The respondents, on the other hand, maintain that the aforesaid mutations, pertaining to 116 kanals and 12 marlas of land, were attested by the Revenue Officers in abuse of their official position and in violation of the provisions of the Agrarian Reforms Act and the applicable settlement instructions, thereby unlawfully conferring ownership rights upon the petitioners. It is further alleged that the course adopted resulted in evasion of stamp duty and corresponding loss to the State exchequer.

3. Reliance is also placed by the petitioners upon the order dated 22.05.2025 passed by the Divisional Commissioner Jammu, whereby the mutation, according to them, was left undisturbed while directing recovery of the requisite stamp duty and associated charges. They contend that the said order lends support to their plea that the dispute essentially concerns the legality and fiscal consequences of a revenue transaction rather than the commission of a criminal offence.

4. The question that, therefore, arises for consideration is whether the material collected during investigation, taken at its face value, discloses the ingredients of criminal misconduct and conspiracy, particularly a dishonest or mala fide abuse of official position for conferring an unlawful pecuniary advantage upon the beneficiaries; or whether the prosecution rests substantially upon a disputed interpretation of Section 121 of the Land Revenue Act and the legality of the exercise of statutory jurisdiction by the Revenue Officers.

5. The mere circumstance that an order passed by a statutory authority may subsequently be considered erroneous or legally unsustainable would not, by itself, constitute criminal misconduct. At the same time, the existence or subsistence of such an order would not preclude criminal prosecution where there is independent material indicating that the statutory power was deliberately abused pursuant to a dishonest or corrupt design. The material distinction, therefore, is between an erroneous or irregular exercise of statutory power and its dishonest exercise in furtherance of a criminal conspiracy.

6. It is in this context that the prosecution material is required to be examined to ascertain whether it contains circumstances, independent of the disputed interpretation of Section 121, capable of prima facie establishing collusion, deliberate abuse of official position or the requisite criminal intent. The absence of an allegation of illegal gratification is not, by itself, determinative; nevertheless, where the foundation of the prosecution is an adjudicatory act performed within the ostensible jurisdiction of the statutory authority, the existence of material disclosing the requisite dishonest or mala fide intent assumes significance.

7. According to the petitioners, the prosecution proceeds on the premise that, since mutation under Section 8 of the Agrarian Reforms Act was attested in favour of the erstwhile owners in 1992, any transfer in favour of the petitioners must necessarily have taken place thereafter and would, therefore, attract the bar contained in Section 28-A of the Act. It is contended, however, that the petitioners had been in possession of the land since 1987 and that the subsequent attestation of mutation under Section 8 merely perfected the rights of the erstwhile owners and did not determine the date on which possession had already been transferred to the petitioners.

8. The petitioners further contend that the transfer in their favour was by way of an oral gift which came to be recognized during Bundobust in 2005. Emphasis is laid on the fact that the erstwhile owners have not disputed the transfer or questioned the mutations on the ground of illegality. It is also pointed out that one of the co-owners, Vijay Singh, though initially associated with proceedings questioning the mutation by way of revision, subsequently stated before the Divisional Commissioner Jammu that he had been misled into initiating such proceedings. On this basis, it is urged that there was no material for the investigating agency to infer a criminal design merely from the attestation of the mutations.

9. Ld. Government Counsel, supporting the charge-sheet, contends that the petitioners are the beneficiaries of an abuse of official position by the Revenue Officers, who, in disregard of the governing rules and instructions, conferred ownership rights upon them. The prosecution disputes the petitioners' claim of being bona fide purchasers or occupants and maintains that the mutations were contrary to the applicable Government Order No. 432-C and other governing instructions.

10. It is further submitted that the petitioners have produced neither an agreement to sell nor any other document evidencing alienation by the recorded owners and have also failed to establish that the mutations were permissible under Hidayat Bundobust, 2005. According to the prosecution, the manner in which the Revenue Officers exercised their authority, resulting in an undue benefit to the petitioners, constitutes sufficient material, at this stage, to sustain the allegation of abuse of official position and conspiracy.

11. Ld. Government Counsel lastly submits that examination of the rival claims regarding the legality of the mutations, the nature and date of transfer, and the veracity of the prosecution material would entail an appreciation of disputed facts and evidence. Such an exercise, it is urged, falls within the province of the trial Court and ought not to be undertaken while exercising jurisdiction for quashing the charge-sheet.

12. Heard both the counsels at length and gone through the record.

13. The substance of the prosecution case is that the then Settlement Officer, in conspiracy with the other accused Revenue Officials, illegally attested Mutation Nos. 558 dated 09.08.2011, 559 dated 16.08.2011 and 564 dated 20.10.2011 under Section 121 of the J&K Land Revenue Act during settlement operations, thereby conferring rights upon the petitioners in respect of land measuring 116 kanals and 12 marlas situated at Village Rajpur Kohlar, Tehsil Bari Brahmana. According to the prosecution, the mutations were attested in violation of Section 28-A of the Agrarian Reforms Act and Government Order S-432 of 1996.

14. The prosecution maintains that Section 28-A prohibited transfer or alienation of land vested in the erstwhile owners under the Agrarian Reforms Act and that similar restrictions operated in respect of the land covered by Government Order

S-432 of 1996. It is further alleged that, instead of attesting a mutation for the village as a whole during settlement operations, three separate mutations were attested in favour of the beneficiaries. These circumstances, according to the prosecution, indicate a concerted exercise of official authority to confer an undue benefit upon the petitioners, besides causing loss to the State exchequer on account of the requisite revenue/stamp duty.

15. Mutation No. 558 pertains to land measuring 61 kanals and 6 marlas, stated to have earlier been recorded under Section 8 of the Agrarian Reforms Act, and was attested in favour of Abdul Hamid and Shabnam Kouser. Mutation No. 559 relates to land measuring 38 kanals and 9 marlas, attested in favour of Mohammad Haroon, Hamid and Arosa Choudhary, part whereof, falling under Khasra Nos. 87, 87-min and 89, is stated to be governed by the Agrarian Reforms Act, while the land under Khasra Nos. 51 and 52 is stated to fall within the purview of Government Order S-432 of 1996. Mutation No. 564 relates, inter alia, to land measuring 9 kanals and 17 marlas under Khasra No. 90-min, attested in favour of Shahnaz Akhter, and land measuring 7 kanals under Khasra No. 87, attested in favour of Sikan Singh, which is also stated to be land governed by Section 8 of the Agrarian Reforms Act.

16. The prosecution has proceeded on the premise that, though the land was proprietary land and the mutations were attested during settlement operations under Section 121 of the Land Revenue Act, the said provision merely empowers the Revenue Officer to determine a question of title for the purposes of settlement and does not authorize conferment of ownership. According to the investigating agency, recourse to Section 121 is permissible only where the underlying mode of acquisition is lawful but the connected record is unavailable. It is essentially on this construction of Section 121 that the prosecution seeks to sustain the FIR and the consequential charge-sheet.

17. It is, however, not in dispute that the mutations were attested by the Settlement Officer during settlement operations and that, by virtue of SRO 314 dated 27.07.1999, the concerned Revenue Officers had been vested with powers for preparation/revision of the record of rights under the Land Revenue Act. The controversy, therefore, is not one of inherent lack of authority in the officer who attested the mutations, but relates to the scope of the power exercisable during settlement and, in particular, whether Section 121 permitted recognition of the rights claimed by the beneficiaries in the circumstances obtaining in the case.

18. Section 22 of the Land Revenue Act provides as under: -

22. Making of special revision of record-of-rights.

(1) Where it appears to the Government that a record-of-rights for an estate does not exist or that the existing record-of-rights for an estate requires revision, it may by a notification direct that a record-of-rights be made or that the record-of-rights be revised, as the case may be.

(2) The notification may direct that the records-of-rights may be made or specially revised for all or any estate in any local area.

(3) A record-of-rights made or specially revised for an estate under this section shall be deemed to be the record-of-rights for the estate, but shall not affect any presumption in favour of the [Union Territory] which has already arisen from any previous record-of-rights.

121**. Procedure to be followed in Settlement Proceedings when a question of title arises**

If, in the course of the record-of-rights or of revision of the record-of-rights in any local area in pursuance of notification issued under Section 22, any question of title arises it will be decided summarily [by the Collector whose decision, subject to such orders as may be passed in appeal by the Divisional Commissioner shall be binding] on the parties till it is set aside by a decree of the Civil Court.

When such a decree is made the record-of-rights shall be corrected, if necessary, in accordance therewith, on an application to the [Collector] within whose jurisdiction the property affected is situate.

Rule 9 of Jadeed Hidayat Bundobust of 2005 applicable for the relevant year when the settlement of the said village was in operation:

> 1. *"When the vendee/vendees have not secured possession, but the vendor/vendors are still in possession of the vended land.*
> 2. *When the vendee/vendees are in possession of less or more land, as such Instead of 02 Kl vendee(s) Is/are In possession of 01 K Land 10 mls or 02 Kls and 10 mls;*
> 3. *When the possession of vendor/vendors Is in the Khara Number other than the one vended, that is, he has purchased a particular survey number, but obtained possession in another survey number;*
> 4. *When the same vended has been sold to be more than one vendor, but possession has been obtained by only one vendor;*
> 5. *When the vended land has been exceeded i.e. If the vended land is 10 Kanals as per the settlement record and sale deed has been executed for 12 Kanals and also possession of 12 Kanals;*
> 6. *In case of oral gift or oral exchange or Shariya Bay (religious sale) provided possession is proved on the spot.*
> 7. *When any proprietary land or "Shamlat land under section 5" has been bought under Road, Nallah, or Canal, but no acquisition proceedings have been made by Govt. Instead, people or owner/s have voluntarily given away the same, process under Section 121 of Land Revenue Act, 1939 shall be made;*
> 8. *When any proprietary land or "Shamlat land under Section 5" has been bought under Road, Nallah, or Canal, but no acquisition proceedings have been made by Govt. Instead, people or owner/s have voluntarily given away the same, process under Section 121 of Land Revenue Act, 1939 shall be made.*
> 9. *If the shape of a field has not changed conspicuously with respect to the one in map (Shajra) of previous settlement but during measurement variation is found between old and new area, no weight age shall be given to this variation, instead a note regarding variation in measurement shall be recorded in "Remarks"column and for all such cases, no proceedings under section 121 Land Revenue Act, 1939 AD shall be given."*

19. The prosecution case proceeds substantially on two premises: first, that the land having been mutated in favour of the erstwhile owners under Section 8 of the Agrarian Reforms Act in 1992, its subsequent alienation in favour of the petitioners was hit by Section 28-A of the said Act; and second, that Section 121 of the Land Revenue Act could be invoked only for determination of an existing question of title and not for conferring ownership upon a person.

20. The material on record, however, indicates that the petitioners claim to have entered into possession in the year 1987, whereas Section 28-A was brought into operation subsequently. The mere fact that mutation under Section 8 came to be attested in favour of the erstwhile owners in 1992 would not, by itself, establish that possession was transferred to the petitioners only thereafter. Significantly, the investigating agency does not appear to have ascertained the actual date on which possession changed hands and has proceeded on the assumption that such transfer must have taken place subsequent to the mutation under Section 8.

21. The matter assumes further significance in view of the order dated 22.05.2025 passed by the Divisional Commissioner. The mutations in question were examined by the competent revenue(revisional) authority, which noticed the plea of oral gift, the possession of the petitioners and the constructions raised by them, and declined to interfere with the mutations. The authority, however, found that the transaction ought to have borne the requisite stamp duty and accordingly directed its recovery along with associated charges.

22. The other limb of the prosecution case rests upon its construction of Section 121 of the Land Revenue Act. Section 121 operates in the field of preparation of the record of rights and empowers the Settlement Officer, where a question of title arises during settlement proceedings duly authorized under Section 22, to determine such question in a summary manner. The determination is subject to the statutory appellate remedy and remains binding upon the parties unless displaced in accordance with law. In the present case, the settlement operations themselves were authorized under SRO 314 and the mutations were attested by the officer vested with the requisite statutory authority.

23. The prosecution nevertheless proceeds on the premise that Section 121 permits determination of title only where the underlying mode of acquisition is otherwise lawful and does not empower the Settlement Officer to recognize ownership on the basis of an oral transaction. This construction has to be considered in the light of Hidayat Bundobust, 2005, which, as relied upon by the petitioners and noticed by the Divisional Commissioner, contemplated recognition during settlement of cases involving oral gift, oral exchange or *Shari Bay*, subject to the prescribed requirements, including possession.

24. What is material for the present proceedings is that the mutations were not attested by an officer lacking jurisdiction, but by a statutory authority exercising powers during duly notified settlement operations. The correctness of the manner in which that jurisdiction was exercised could undoubtedly be examined by the competent appellate or supervisory revenue authority. Indeed, the mutations were subjected to such scrutiny and were not interfered with by the Divisional Commissioner.

25. An investigating agency may certainly investigate a statutory or quasi-judicial act where there is material suggesting that the power was exercised dishonestly, corruptly or pursuant to a criminal conspiracy. It cannot, however, substitute its own interpretation of the statutory provision for that of the competent authority and, on that basis alone, convert an allegedly erroneous exercise of statutory jurisdiction into criminal misconduct. There must exist material, independent of the alleged legal error, from which the requisite dishonest or corrupt intent can prima facie be inferred.

26. In the present case, no allegation of payment or acceptance of illegal gratification has been attributed to the petitioners or the Revenue Officers. The foundation of the prosecution, as reflected from the material placed before the Court, is essentially the alleged impermissibility of the mutations under Section 121, the applicability of Section 28-A of the Agrarian Reforms Act and the consequential non-payment of stamp duty.

27. The issue concerning stamp duty also stands on a distinct footing. The Divisional Commissioner, while declining to interfere with the mutations, directed recovery of the deficient stamp duty and associated charges, which, according to the petitioners, have since been deposited. Thus, the fiscal consequence of the transaction was treated by the competent authority as one requiring recovery of the statutory dues rather than invalidation of the mutations.

28. Viewed thus, the material relied upon by the prosecution would have to disclose something more than an allegedly erroneous interpretation or application of the revenue laws. Unless there is material indicating collusion, dishonest abuse of official position or a deliberate exercise of statutory power for an unlawful consideration or purpose, the mere fact that the investigating agency considers the mutations legally impermissible would not, by itself, satisfy the essential ingredients of criminal misconduct or conspiracy.

29. The distinction is fundamental: an erroneous exercise of statutory or quasi-judicial power may expose the order to correction in accordance with the remedies provided by law, but criminal liability requires the additional element of culpable intent contemplated by the penal provision. In the absence of material disclosing such intent, the legality of an adjudicatory order cannot, merely by reason of a competing interpretation of the governing statute, be transformed into a criminal offence.

30. The petitioners have also sought to draw support from the protection available to officers exercising judicial or quasi-judicial functions. Reliance has been placed upon the decision reported as 2000 SCC Online MP 297, wherein a Naib Tehsildar, sought to be arrayed as an accused in relation to an order passed in mutation proceedings, was held entitled to protection under Section 3(1) of the Judges (Protection) Act, 1985, having exercised adjudicatory powers vested in him by law. Reference has also been made to the decision reported as (2006) 1 SCC 266 for the proposition that where an authority exercises quasi-judicial powers conferred by statute, the mere fact that the order passed by it is alleged to be contrary to law would not, by itself, justify criminal prosecution for the exercise of such jurisdiction. The petitioners accordingly contend that the Settlement Officer, while exercising powers under Section 121 of the Land Revenue Act, was acting in a quasi-judicial capacity and his decision cannot be converted into a criminal act merely because the investigating agency considers the decision legally erroneous.

31. The principle governing accountability of officers exercising quasi-judicial functions has also received consideration in the context of disciplinary proceedings. In the decisions reported as (1999) 7 SCC 409 and *Union of India v. A.N. Saxena*, (1992) 3 SCC 124, the Supreme Court emphasized the need for caution while examining actions taken in discharge of judicial or quasi-judicial functions. Such protection is, however, not absolute. Where the material indicates that the officer acted with an improper motive, to confer an undue favour, or otherwise than in good faith, the quasi-judicial character of the function would not furnish immunity against appropriate proceedings.

32. The aforesaid principles have relevance to the present case because the Settlement Officer was exercising statutory powers during settlement proceedings. The crucial inquiry, therefore, is not merely whether the mutations were legally correct, but whether there is material to indicate that the statutory jurisdiction was exercised dishonestly or for an improper purpose. An error in the exercise of quasi-judicial power and a dishonest abuse of that power occupy distinct fields; the former cannot, without the additional element of culpable intent, be equated with the latter.

33. There is yet another aspect of the matter. The prosecution proceeds on the footing that the impugned mutations resulted in conferment of ownership rights upon the petitioners. The legal effect of a mutation entry, however, has to be understood in the settled context of revenue jurisprudence. In the decision reported as (1996) 6 SCC 223, the Supreme Court held that mutation of property in the revenue record neither creates nor extinguishes title and is essentially relevant for fiscal purposes, including collection of land revenue. The same principle was reiterated in the decision reported as (2015) 14 SCC 784.

34. Seen in this light, the allegation that the Settlement Officer, by the mere act of attesting the mutations, conferred title upon the petitioners requires closer scrutiny. An entry in the revenue record cannot, by itself, constitute the source of title where none otherwise exists; nor can it extinguish a title subsisting under the substantive law. The rights of the parties ultimately remain subject to adjudication by the competent forum in accordance with law.

35. The prosecution has also relied upon the fact that part of the land was governed by Government Order S-432 of 1996 and was, therefore, subject to restrictions upon alienation. Even assuming that the transfer required prior permission or otherwise contravened the conditions governing such land, the consequence of such violation has to be determined under the governing statutory or regulatory framework. The existence of a restriction upon alienation does not, without anything further, establish that the Revenue Officer who recorded the consequential mutation acted with the dishonest intention necessary to constitute criminal misconduct.

36. In this context, reliance has also been placed upon the judgment reported as AIR 2017 J&K 14, arising out of refusal to register a sale deed on the ground that permission for alienation had not been obtained. The relevance of the said authority would have to be appreciated in the context of the legal consequence attached to a transfer made in breach of a restriction upon alienation and, in particular, whether such restriction renders the underlying transaction void or merely exposes it to the consequences contemplated by the governing law. It was held as under:-

> ***"11. After the petitioner No. 1 was conferred with proprietary rights over the land in terms of order of 1966, the said order outlived its life to the extent of petitioner No. 1. His rights thereafter were governed by the Transfer of Property Act, Land Alienation Act and Agrarian Reforms Act. The Act of 1976, in view of the mandate contained in its section 31, did forbid alienation of land defined under it. However,***

section 31 of the Act of 1976 was omitted in the year 1997. The express provision, forbidding sale of the land, defined in the Act of 1976, was, thus, removed by the Statute itself. The condition contained at paragraph 04 of the order of 1966 for seeking permission for alienation of land, in view of the provisions of the Act of 1976, more particularly, section 42(1), thus, has ceased to be in operation. Even otherwise, attaching the condition of seeking permission for alienation of land in respect of which, proprietary rights stand conferred, is against the concept of exercising complete dominion over the land, of which proprietary rights were conferred on petitioner NO.1. After becoming absolute owner of the land, restriction could not be imposed for its alienation. Such a condition could be imposed only by an act of legislation. Initially a like condition was imposed in terms of section 31 of the Act of 1976 but the said provision was, subsequently, omitted. The land was permitted to be alienated to a limited extent for the purpose of construction of residential house.

12. It appears that the condition of seeking previous permission from the Government for alienation of land, in respect of which, ownership rights were conferred by the government as the person was holding the land as tenant under the State, was done with the purpose to ensure that the benefit of land accrues to the grantee and he uses it for agriculture purpose.

13. In earlier times, agriculture activity was the backbone of economy of the State. The land, which was given for agriculture purposes to a state subject, was to ameliorate the sufferings of such person/his family. Now the times have changed. The agriculture activity is no more the main economic activity of the State. The condition of seeking pervious permission of the Government for alienation of land, which was given for agriculture purposes, in terms of paragraph 04 of the order of 1966, is rendered otiose and will not effect right of the owner of land to alienate the same provided other statutory requirements are fulfilled for such alienation.”

37. The aforesaid legal position substantially answers the prosecution case founded upon the alleged prohibition against alienation. If the land held by the erstwhile owners, whether under Section 8 of the Agrarian Reforms Act or Government Order No. S-432, was not subject to an absolute prohibition against transfer in the manner suggested by the prosecution, the very premise on which the mutations have been treated as inherently illegal would require reconsideration.

38. This aspect assumes significance also in view of the order passed by the Divisional Commissioner, who, upon examination of the mutations, did not find ground to annul them and treated the deficiency essentially as one relating to payment of stamp duty and associated charges. The petitioners claim to have deposited the amount so determined. The enquiry conducted at the instance of the competent revenue authority also did not result in setting aside the mutations. In such circumstances, a criminal prosecution cannot be sustained merely on the investigating agency adopting a construction of the governing revenue provisions different from that accepted by the competent statutory authority, unless the material collected during investigation independently discloses the ingredients of the offences alleged.

39. The contention of the respondents that the petitions have been rendered ineffective on account of filing of the charge-sheet during their pendency is equally untenable. The subsequent filing of a final report does not, by itself, denude this Court of its jurisdiction to examine the legality of the criminal proceedings. Where the foundational allegations, even when taken at their face value, do not disclose the ingredients of the offence alleged, the Court is not precluded from exercising its jurisdiction merely because investigation has culminated in presentation of the charge-sheet.

40. In this regard, reference has been made to the judgment of a Coordinate Bench of this Court reported as JKJ Online 88119, arising out of an allegation under Section 5 of the Prevention of Corruption Act. The allegation therein also involved departure from departmental procedure resulting in pecuniary advantage to the beneficiaries. The Coordinate Bench, relying upon the decision of the Supreme Court in *C.K. Jaffer Sharief v. State (Through CBI),* (2013) 1 SCC 205, examined whether violation of prescribed procedure, coupled with the resulting pecuniary advantage, would by itself satisfy the ingredients of criminal misconduct it was held therein,

> *"23. In the present case, the prosecution records reveal only violation of technical guidelines as also the Departmental and procedural norms on*

the part of the petitioners. The prosecution has failed to collect any material to show that that petitioner did know with dishonest intention with a view to obtain for themselves or any other person any valuable things or pecuniary advantage".

24. In view of what has been discussed hereinabove, it is clear that even if the material collected by the Investigating Agency against the petitioners is taken to be correct as its face value and the allegations made in the charge-sheet are also accepted as correct, still then, the charges for offences under Section (5) (1) (C) & (d) of PC Act, or for that matter, any other charge is not made out against the petitioners. Their non-adherence to the procedures and technical guidelines can, at best, give rise to a cause for initiating a regular Departmental enquiry against them, but not a criminal prosecution."

41. The principle assumes relevance in the present case because an irregularity, procedural infraction or erroneous exercise of official power cannot, merely because some benefit has accrued to another person, be equated with criminal misconduct. The prosecution must disclose the additional elements required by the penal provision, including the culpable abuse of official position contemplated thereunder. The existence of a pecuniary advantage may be a relevant circumstance, but cannot substitute proof of the ingredients constituting the offence. Consequently, the filing of the charge-sheet does not foreclose scrutiny of the fundamental question whether the material collected by the investigating agency, even if accepted as it stands, discloses criminal misconduct and conspiracy, or merely alleges an irregular or legally erroneous exercise of statutory authority. It is this distinction which must govern the exercise of jurisdiction in the present petitions.

42. Dealing with another case reported in 2025 SLJ 884, thereto FIR has been registered on the basis of joint surprise check raising accusation against the accused for offences under Section 5(1)(d) of the Prevention of Corruption Act. The court found that what the prosecution record reveals that the accused may have violated departmental norms while incurring expenditure out of the development funds but that only indicates in para 30 and 31 as under: -

> *"30. In the present case, the prosecution records reveal that the petitioner may have violated departmental norms while incurring expenditure out of the Hospital Development Fund but, nonetheless, the only intention of the petitioner in doing so was to take care of extreme urgency that had arisen on account of peculiar circumstances which had prevailed pursuant to Amarnath Land row and the said action of the petitioner was even ratified by the Hospital Development Committee. Similarly, the petitioner may have also been found lacking in exercising a proper control over the accounts wing of the hospital but because he was not the Drawing and Disbursing Officer of those two particular accounts, therefore, it cannot be inferred that he was a part of the conspiracy in so far as embezzlement of funds out to those two-account head is concerned. Mere lack of supervision on the part of the petitioner cannot form a basis for roping him in the conspiracy, particularly when he is not a signatory to the account books pertaining to those two account heads.*
>
> *31. It is in the face of aforesaid facts and circumstances that the both the Enquiry Committees have exonerated the petitioner of the charges levelled against him and the Government has only issued a warning against him on account of his lack of supervision over the accounts wing. In such circumstances, the ratio laid down by the Supreme Court in Ashoo Surendranath Tewari's case (supra) would apply on all fours to the present case. Therefore, the petitioner, on the basis of the material collected by the Investigating agency during the investigation of the case and on account of the fact that he has been fully exonerated by the two enquiry committees in the regular departmental proceedings, cannot be made to suffer the criminal prosecution emanating out of the impugned FIR. In these circumstances, this Court finds the present case as the fit one for exercising its powers under Section 482 of Cr.P.C for quashing the criminal proceedings against the petitioner so as to secure the ends of justice and to prevent abuse of process of law."*

43. In the backdrop of the aforesaid discussion, the mere attestation of mutations by the Settlement Officer in favour of the petitioners would not, by itself, attract Section 5(1)(d) of the Prevention of Corruption Act or Section 120-B RPC. The prosecution material does not disclose any allegation of illegal gratification or other pecuniary advantage having been obtained by the Revenue Officials from the petitioners. Nor is there any material indicating a prior meeting of minds between them for securing attestation of the mutations through an abuse of official position. For an offence of conspiracy, there must be material from which an agreement or meeting of minds to commit an illegal act, or a legal act by illegal means, can prima facie be inferred. Such an inference cannot rest merely upon the fact that the petitioners derived a benefit from orders passed by the

Revenue Officers in exercise of their statutory powers. This assumes greater significance when the erstwhile owners have neither alleged any fraudulent transfer nor successfully questioned the mutations.

44. The foundation of the prosecution case is essentially that the Settlement Officer could not, in law, have attested the mutations in exercise of powers under Section 121 of the Land Revenue Act. The mutations, however, were amenable to scrutiny before the competent revenue authority and have subsequently been examined by the Divisional Commissioner, Jammu, who declined to interfere with them. Once the statutory appellate authority has sustained the mutations, the investigating agency's contrary understanding of the scope of Section 121 cannot, in the absence of independent material disclosing corrupt intent or conspiracy, constitute the sole foundation for criminal prosecution. In case the plea of respondents is taken to be legally tenable, then the appellate/revisional authority too needs to be put to prosecution.

45. The issue is not whether an order of a statutory authority can ever be subjected to criminal investigation. It undoubtedly can, where there is material indicating that the order was procured or passed pursuant to bribery, dishonest abuse of office, fraud or a criminal conspiracy. What is impermissible is to equate an alleged error in the exercise of statutory jurisdiction, without the requisite criminal element, with an offence under the Prevention of Corruption Act.

46. Viewed thus, continuation of the proceedings merely on the premise that the investigating agency considers the mutations technically impermissible under Section 121 would amount to permitting its interpretation of the revenue law to override the determination made within the statutory hierarchy, without any independent material disclosing criminality. The filing of the charge-sheet during the pendency of these petitions does not alter this position. This Court retains jurisdiction to examine whether the allegations contained in the FIR and the material forming part of the charge-sheet, taken at their face value, disclose the essential ingredients of the offences alleged. Where such ingredients are absent, continuation of the criminal proceedings would serve no legitimate prosecutorial purpose and would amount to an abuse of the process of law.

47. The aforesaid conclusion also finds support from the principle reiterated by the Supreme Court in (2024) 12 SCC 181. Referring to *Indian Oil Corporation v. NEPC India Ltd.* and *G. Sagar Suri v. State of U.P.*, the Supreme Court cautioned against the tendency to give a criminal complexion to disputes which, in substance, fall within the civil domain. It was reiterated that criminal process ought not to be employed as a means of exerting pressure for resolution of disputes which do not otherwise disclose the commission of a criminal offence.

48. The principle, however, is not that the existence of a civil, revenue or statutory remedy excludes criminal prosecution in every case. Civil and criminal consequences may coexist where the allegations independently disclose the ingredients of a criminal offence. The relevant inquiry is whether, notwithstanding the civil or revenue character of the dispute, the material placed on record discloses the requisite criminality.

49. Tested on this principle, the controversy in the present case essentially emanates from the legality of mutations attested by the Settlement Officer in exercise of powers under Section 121 of the Land Revenue Act, the applicability of the restrictions contained in the Agrarian Reforms Act and Government Order S-432, and the fiscal consequence arising from non-payment of stamp duty. These matters have also been subjected to scrutiny within the statutory revenue hierarchy.

50. In the absence of independent material indicating bribery, dishonest abuse of official position or a prior meeting of minds between the petitioners and the Revenue Officials, an alleged error or irregularity in the exercise of statutory jurisdiction cannot, merely by describing the resultant benefit as an undue advantage, be converted into criminal misconduct or conspiracy. To permit the prosecution to continue solely on such foundation would amount to giving a criminal colour to what, on the material placed before the Court, essentially remains a dispute concerning the legality and effect of proceedings undertaken under the revenue laws. The criminal process cannot be employed to substitute the statutory mechanism provided for correction of an allegedly erroneous revenue adjudication. Where the foundational facts, even if accepted as alleged, do not disclose the essential ingredients of the offences invoked, continuation of such proceedings would amount to an abuse of the process of law. For the reasons so stated, these petitions succeed are thus allowed, thereby quashing the criminal proceedings initiated against them on the strength of case FIR No. 05/2021 dated 03.02.2021, registered by the Anti-Corruption Bureau, Jammu, under Section 5(1)(d) read with Section 5(2) of the J&K Prevention of Corruption Act, SVT. 2006 and Section 120-B RPC in so far as it relates to the petitioners herein.

(Sanjay Parihar)
Judge

Jammu
17.09.2026
Rahul Sharma

Whether the judgment is speaking? : **Yes**
Whether the Judgment is reportable? : **Yes**