

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(through Virtual Mode)

Pronounced on 06.10.2026
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CRM(M) No.779/2024
CrIM No. 1600/2024
c/w
CRM (M) No. 116/2025
CrIM No. 237/2025
CrIM No. 506/2025

Manhar Gupta and ors
(with clubbed matter)

...Petitioner(s)

Through:

Ms Radha Sharma, Adv.
(in CRM(M) No. 779/2024)

Mr. Sunil Sethi, Sr. Advocate
With Mr. Paras Sharma, adv.
(CRM (M) No. 116/2025)

VS.

Union Territory of J&K and Others.

...Respondent(s)

Through:

Mr. Raman Sharma , AAG
With Ms. Saliqa Sheikh, Adv

CORAM:

Hon’ble Mr. Justice Mohd. Yousuf Wani, Judge

JUDGMENT

1. Through the medium of instant petitions having been filed in terms of the provisions of Section 528 of *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS for short), corresponding to Section 482 of the repealed *Code of Criminal Procedure, 1973*, (Code for short), the petitioners have thrown challenge to the order dated 13.08.2024 passed by the Court of learned Special Judge Anti-Corruption, Jammu (herein after referred to as “Special Judge” for short), on the final closure report/ Ikhtitami, presented by the Anti-Corruption Bureau, (ACB) Jammu, bearing file number 361/

Ikhtitami/2022 titled ***UT of J&K through Police Station ACB Jammu vs. Shri Manhar Gupta and others*** (four persons), whereby the learned Special Court rejected the said Final Closure Report/Ikhtitami, which had exonerated the accused public servants, namely: ***1. Manhar Gupta, son of Late Sh. A. R Gupta, R/o 168, Sec-D Sainik Colony, Jammu, 2. Asgar Hussain, Late Sh Ghulam Mustafa Ishrat R/o Ishrat Manzil Kishtwar, 3. Tasaduq Hussain Sheikh S/o Sh. Gh. Mustafa Sheikh R/o Village Khalu, BPO Bharla Tehsil Bhaderwah District Doda, and 4. Umesh Perihar, son of Late Shri M. R Parihar, R/o F-53 Karan Nagar, Jammu***, who had come to be associated in their official positions in the execution of **SAUBHAGYA** Scheme in Jammu Province, from any criminal liability and had only recommended departmental action, (D.A) against them for committing violations of the guidelines of the Scheme.

2. The facts of the case relevant for disposal of the instant petitions are that the Government of India launched a scheme, namely Pradhan Mantri Sahaj Bijli Har Ghar Yojna (SAUBHAGYA) in order to electrify each and every un-electrified household up to the last mile connectivity in both urban and Rural areas of J&K through on grid and off grid mode. That the objective of the scheme was to achieve universal household electrification by providing last mile connectivity and electricity connections to all households in rural and urban areas of erstwhile State of J&K.

That aforesaid SAUBHAGYA scheme was approved by the Ministry of Power, Government of India on 11.10.2017 and 20.10.2017. That according to the operational guidelines issued for implementation of said scheme, Rural Electrification Corporation Ltd. (RECL), was nominated as

Nodal Agency for implementation of the said scheme and beneficiaries under the said scheme were identified by using Socio Economic Caste Census (SECC) done in the year 2011. That SAUBHAGYA scheme was regarded as one of the most successful endeavours of Power Development Department. That it was the largest network expansion program ever happened in the history and was successfully accomplished within a definite and very limited time frame. That a coordinated approach involving various stakeholders and departments from the initial survey to the commissioning of projects, coupled with close monitoring by authorities at various levels and the immediate resolution of bottlenecks, were key attributes to Scheme's success. That being a public benefit scheme, the people remained associated with the Department throughout its implementation period. That the efforts of the departmental workforce, particularly those operating in remote and inaccessible areas were highly appreciated. That these workers provided connections to households that had been without electricity for the past 70 years. That additionally, in some regions, material such as poles and transformers had to be transported manually/head Load over distances of more than 20 km. That pictures documenting the execution of the scheme in the challenging terrains of J&K are available on record and have been featured in various Government of India magazines. That for ensuring last mile connectivity under the scheme, the public involvement was given top priority. That in this regard, various camps were regularly organized to facilitate the release of electricity connections right at the consumers' doorsteps. That these efforts were widely published through print and electric media with media records available on record.

That the execution of the aforesaid scheme was closely monitored by various stakeholders including the Nodal Agency of Ministry of Power (REC), JKPDD, Project Monitoring Agency and several other agencies.

That the Project Monitoring Agency (PMA) as per the assigned duties maintained and updated each household and the associated progress infrastructure on the MIS Portal which was accessible to all stakeholders.

That additionally, the list of beneficiaries was uploaded on the SAUBHAGYA Portal developed by the Ministry of power for this purpose. That despite extensive coverage of the scheme across nearly every village and hamlet, minimal complaints were received from Doda and Kishtwar regions which were also promptly addressed.

That the SAUBHAGYA scheme was completed in March, 2019. However, on the basis of preliminary enquiry conducted by the Anti-Corruption Bureau, J&K with respect to allegations that the officers/officials of Power Development Department J&K had committed certain alleged irregularities while implementing the SAUBHAGYA, two FIRs viz.; FIR No.03/2020 with Police Station, Anti-Corruption Bureau, Srinagar with respect to Ganderbal District of Kashmir region and FIR No. 04/2020 with Police Station, Anti-Corruption Bureau, Jammu came to be registered with respect to District Doda in Jammu region in the month of March, 2020. That, the investigation was extended in respect of various other districts of the UT of J&K as well.

That both the Police Stations Anti-Corruption Bureau Srinagar and Anti-Corruption Bureau, Jammu carried out extensive and exhaustive investigation into the allegations in both the FIRs registered by them and finally both these Police Stations Anti-Corruption Bureau Srinagar and

Anti-Corruption Bureau Jammu concluded the investigation by filing two separate final closure reports/Ikhtitami's before the Courts of Ld. Special Judge, Anti-Corruption, Srinagar and Ld. Special Judge, Anti-Corruption Jammu. That the Court of Ld. Special Judge, Anti-Corruption Srinagar on receipt of the final closure report on 18.02.2022 carried out necessary proceedings on the said report and finally vide order dated 08.06.2024 accepted the same in its entirety.

That in so far as final report (Ikhtitami) arising out of FIR NO. 04/2020 dated 05.03.2020 of Police Station, ACB Jammu is concerned, the same was presented before the Court of Ld. Special Judge, Anti-Corruption, Jammu on 07.02.2022 and the Ld. Court after examining the same **rejected it vide impugned order dated 13.08.2024** with directions to Anti-Corruption Bureau Jammu to conduct further investigation.

That regarding the issue of unutilized material despite claims submitted to the Government of India indicating that the SAUBHAGYA scheme achieved its target of 100% electrification, it is to state the scheme in question was approved by the Government of India in two parts. That in the first part HH electrification/providing of connection to un-electrified HHs works were sanctioned under 'Saubhagya' scheme for Rs. 133 Crores. That in the second part an amount of Rs. 875 Crores was sanctioned for providing 'Additional infra under DDUGJY for system strengthening, sanctioned 88 special dispensation for J&K alongwith some other States, to supplement the HH electrification works taken up under Saubhagya scheme. That the Saubhagya scheme was fully accomplished with desired objectives achieved within the timeline (28.10.2018), as per the site

requirements. That the UCs/certificates of successful completion were accordingly submitted for participation in the Saubhagya award scheme announced by the MoP. That however, the other part concerning providing Additional infra under DDUGJY could not be fully completed in view of stringent timeline (31.03.2019) and some material with almost every division remained un-utilized. That the matter regarding un-utilized material has been deliberated at State Level Standing Committee (SLSC) headed by Chief Secretary, J&K and the Ministry of Power (MOP) immediately after closing of the scheme. That SLSC accorded its approval for execution of unutilized material under state plan and later on as the recommendation of SLSC, MOP sanctioned the cost of un-utilized material along with its execution charges for providing Additional Infra under DDUGJY scheme. That the MoP also approved time extension till 31.12.21 for execution of the said works, under Additional Infra (DDUGJY). That as such, in view of time extensions provided for execution of works by the authorities, the deadline of 31.03.2019 fixed by Commissioner/Secretary PDD vide instructions/ circular dated 08.04.2019, highlighted in Court Judgment, has become null and void. That it is apt to mention here that the un-utilized material under reference comprises of poles, DTs, wires & conductor which is of daily use for the department, having life expectancy of more than thirty-five years. That the aforesaid aspects have been exhaustively dealt with by the investigating agency and due findings and opinion in the closure report have been reflected leaving no room for any further investigation in the matter. That the Ld. Court below under the given circumstances ought to have accepted the closure report.

That the petitioners alongwith all other officials associated with the execution of SAUBHAGYA Scheme have been awarded by the Govt. of India for timely and satisfactory execution of an extensive Scheme in the state of J&K, but, the petitioner(s) despite being subjected to investigation twice by the respondent and by the department, have again been subjected to further investigation by virtue of order impugned, which renders the impugned order highly vitiated and liable to be quashed as the petitioner(s) cannot be subjected to investigations again and again for the same allegations.

That a bare perusal of the impugned order reveals that the closure report remained pending before the learned trial court for about two and a half years, during which the respondent failed to bring subsequent developments in the case—namely, the RDA and third-party inspection—to the court's notice. That had the outcome of the RDA and third-party inspection been brought to the court's attention, the learned Special court could not have directed for further investigation.

That it is also brought to the kind notice of this Court that in similar FIR No.03/2020, closure report filed by the ACB stands accepted by the Court of Ld. Special Judge Anti-Corruption, Srinagar vide order dated 08.06.2024. That it is pertinent to mention that the Anti-Corruption Bureau J&K vide letter dated 27.01.2022 requested the Principal Secretary to Government General Administration Department to initiate Regular Departmental Action against the delinquent officers/officials. That pursuant to the recommendations of Anti-Corruption Bureau J&K, a Regular Department Action was initiated and finally the Government in the Power Development Department issued Government order no. 78-

JK(PDD) Of 2024 dated 02.05.2024 wherein the following observations have been returned: -

"(i). There is no material evidence that proves willful wrongdoing on the part of any officer/official associated with the implementation of Saubhagya scheme;

(ii). The omissions and commissions pointed out by the ACB have been satisfactorily explained by both the MDs in their respective reports after detailed verification.

(iii). The Government of India has conducted third-party inspection of the works executed under Saubhagya Scheme along with other central sector schemes in each district, which stands uploaded on the SAKSHYA Portal and is in public domain, showing no deficiency in the execution of works, which again substantiates that the works have been executed satisfactorily as per the DPR.

(iv). The closure statement of the Saubhagya scheme in respect of all the districts was prepared in February 2022, which stands submitted to the Government of India after proper audit, certification by the CA alongwith necessary approval of the authorities. The said repots have been duly accepted by the Gol and no expenditure has been booked under the scheme beyond the closure amount approved by the Gol.

Now, therefore, in the light of above facts and circumstances there is no material evidence available on record to initiate departmental proceedings (RDA) against the officers/officials associated with the implementation of Saubhagya scheme. Hence the matter is hereby closed."

3. The impugned order has been assailed by the petitioners through these two petitions on the grounds:-

(a) That same is not legally sustainable and is liable to be set aside on the ground that Investigating officer has conducted very exhaustive and thorough investigation into each of the allegations and returned sufficient

findings in the final report presented before the learned Special Court. That the Court below, without properly evaluating the findings returned by the investigating officer as recorded in the final closure report, in a hot haste manner, disagreed with the findings and opinion of the investigating officer and passed the impugned order directing further investigation notwithstanding the fact that all the allegations and accusations had been exhaustively examined in reference to the relevant records by the investigating officer. That the nature of final report depended upon the outcome of the investigation and the findings of the Investigating Agency.

(b) That the Special Court could not have compelled the investigating agency to take a different view. That the impugned order, which directed for further investigation is, in essence, a direction for reinvestigation, as is apparent from the questionnaire framed by the learned Special Court, which is beyond the jurisdiction.

(c) That after the submission of the closure report by the ACB, Jammu, before the learned Special Court, a Regular Departmental Action (RDA) was conducted by the Power Development Department, with holding of simultaneous inspections and audits in which process the final closure report of the ACB Jammu was accepted by the Government of India, and such further material developments were not brought to the notice of the learned Court by the ACB.

(d) That almost all the points raised by the learned Special Court for investigation, as per the impugned order, had already been taken care by concluding inspections during the pendency of the closure report in the process of the aforementioned RDA, supported with inspection and audits.

(e) That a detailed verification was conducted with respect to the process of tendering and quality of material procured during the RDA, and it was ascertained that the methodology adopted for purchase of material by erstwhile Procurement and Material Management Wing of J&K, as per the records, was through e-tendering. That SICOP was also found to have followed the prescribed procedure in letter and spirit. That the

authorization for procurement of material from the Procurement and Material Management Wing of the PDD and SICOP was decided in the SLSC meeting held under the chairmanship of the Chief Secretary, J&K. That both agencies, being Government-owned, have followed the prescribed procedure for procurement of material and for arriving at the rates. That, besides, both the said agencies have their own quality-check arrangements in place.

(f) That by the time the Saubhagya Scheme was completed, the execution of works under DDUGJY, JAYPM, DP and RE Wing-xii Schemes were at its initial stages in the Districts of Reasi, Udhampur and Ramban, which were independently managed by DCIL and PCIL. Thus, the levelling of allegations of misconduct on account of non-distinguishment between the Saubhagya works and similar works executed under different schemes/plans appear to be without any substance.

(g) That third-party inspections continued after the completion of the DDUGJY Scheme, RE Wing-xii, and the works included under the two types of schemes, i.e., Saubhagya and other schemes, were separately documented and uploaded on the portal along with complete photographs. That the issue of certain bills having been uploaded on the PFMS portal without PMA signatures was examined by the MD's of both the Corporations during the RDA proceedings, and satisfactory explanations were provided.

(h) That it was confirmed by the MDs that PMA personnel were involved throughout the execution of the works under the Scheme and consistently inspected and uploaded the progress as per the scope of the MIS portal, which was accessible to both the PDD authorities and the nodal agency/Ministry of Power.

(i) That, as such, the PMA's involvement at a later stage for the signing of bills, as mentioned in the impugned order, was merely a procedural lapse, having no physical or financial impact.

(j) That further, following the instructions of the Government of India, re-cost DPRs for each district were prepared by the respective divisions on

the basis of the actual work completed as on the date of closure of the Scheme, i.e., 31st March 2019. That the said DPRs were duly verified and signed by the PMA before submission to the SLSC for necessary approval, thereby confirming that the PMA validated the quantum of work executed by the J&K, PDD. That moreover, the works were also inspected by the third-party agency appointed by the Government of India, apart from the PMA appointed by the J&K, PDD.

(k) That in addition to the checks carried out by the PMA with respect to the scope of work, a new concept introduced in J&K involved regular inspections by officers at all levels, which continued prior to verification of bills, in accordance with standard engineering norms and the prescribed procedure for monitoring cost and progress during execution of the Scheme and the projects.

(l) That regarding the issue of unutilized material, despite the closure of the Scheme, the matter was submitted to the Government of India.

(m) That the learned Special Court, vide its order dated 17.03.2022, allowed the application for release of records containing copies of the schemes, tenders, work orders, LOAs and other allied documents seized by ACB Jammu in connection with FIR No. 04 of 2020, while taking into consideration the specific submissions regarding the accomplishment of the Scheme targets, as well as the pending liabilities for payments which could not be considered and processed under rules in the absence of the relevant records.

(n) That the said release order was passed by the learned Special Court while keeping in view the fact that the case stood closed as “**Not proved**” and the closure report stands presented. That the court thus observed that, retention of the records sought to be released for an uncertain period, pending consideration and disposal of the closure report, was not likely to serve any useful purpose.

4. That the respondent-UT, through ACB Jammu, has, however, resisted the petitions in hand, inter alia, on the ground that the petitions are not maintainable, having been filed by invoking the wrong provisions of law.

That the occurrences covered under FIR No. 04 of 2020, Police Station ACB Jammu, pertain to the period prior to the enforcement of the J&K Re-organisation Act, 2019, as also the new criminal laws, and, as such, the petitions were required to be filed in terms of Sections 561–A of the erstwhile and repealed J&K Code of Criminal Procedure.

That it is well settled that the inherent power of this Court could be invoked only when there is gross misuse of powers or abuse of the process of law. That so far as the matter in hand is concerned, there is no such misuse or abuse of the process of law which could justify the invoking of the inherent power of this Court.

That the alleged grievance of the petitioner(s) projected in their petitions is unfounded, because the impugned order has been passed by the learned Special Court in lawful exercise of the power vested in it under law. That the grounds on which the petitioners have sought quashment of the impugned order can be looked into and addressed only during the further investigation so ordered by the learned Special Court in terms of the impugned order.

That the learned Special Court, despite being of Sessions grade, also enjoys magisterial powers and is, as such, well competent to direct further investigation in a case for unearthing all facts and circumstances. That the power to direct further investigation is vested in the learned Special Court in terms of Section 173(8) of the Code, corresponding to Section 193 (9) of the BNSS. That through the medium of the impugned order, the learned Special Court has ordered further investigation in the case and not reinvestigation, as alleged by the petitioners.

That a criminal court is not always bound to accept the findings arrived at by the investigating agency. That upon presentation of a final police report, a Magistrate has three options: first, he may agree or disagree with the findings of the investigating agency; second, he may order further investigation; or third, he may take cognizance of the matter.

That the various contentions of the petitioners can be addressed during the course of further investigation ordered in the matter vide the impugned

order, which, however, came to be stayed by this Court in terms of order dated 14.10.2024 passed in these petitions.

That the plea of double jeopardy taken by the petitioners is without any basis. That a person can take such a plea only when he is subjected to trial twice for the same offence. That merely because an accused, being a public servant, is contemplated to be subjected to criminal prosecution besides departmental action does not amount to double jeopardy. That the departmental action/ disciplinary proceedings and the criminal prosecution or trial operate in different spheres, and have different parameters and scope.

That the developments which have taken place in the matter during the intervening period between the presentation of the closure report and the passing of the impugned order can be looked into only during the course of further investigation so ordered by the learned Special Court vide the impugned order.

That the order passed by the learned Special Judge, Anti-Corruption, Srinagar, on the final closure report/Ikhtitami in an identical case, i.e., FIR No. 03 of 2020 of Police Station ACB Srinagar, is not binding upon the learned Special Court, which has passed the impugned order on the basis of its own findings.

That the petitioners should not have felt aggrieved by the impugned order, rather, they should avail the opportunity and prove their innocence on the grounds pleaded by them. That there is no legal bar for subjecting an employee both to departmental action (RDA) and criminal prosecution and even the exoneration of an employee in departmental action is no ground to exonerate him in the criminal proceedings as well.

5. I have heard the learned counsel for the parties, who almost reiterated the stands already taken by them in their respective pleadings, i.e., the memo of petition (s) and the objections.

6. I have gone through the petitions in hand, as also the copies of the

documents enclosed with the same as annexures thereto, especially the impugned order dated 13.08.2024 passed by the learned Special Judge, Anti-Corruption, Srinagar, on the final closure report (Ikhtetami) dated 07.02.2022, arising out of case FIR No. 4 of 2020 dated 05.03.2020 of Police Station ACB Jammu; the order dated 08.06.2024 passed by the Court learned Special judge , Anti-Corruption, Srinagar, on the final police closure report (Ikhtetami) bearing No. 1 of 2022 dated 18.02.2022, arising out of case FIR No. 3 of 2020 dated 05.03.2020 of Police Station ACB, SBG, Kashmir; the communication of the ACB dated 27.01.2022 addressed to the Principal Secretary to Government, General Administration Department, J&K, Jammu, on the subject of RDA and alert notice in case FIR No. 3 of 2020, ACB Srinagar, and FIR No. 4 of 2020 of Police Station ACB Jammu. Government Order No. 78-JK-PDD of 2024 dated 02.05.2024 issued by the Power Development Department, Civil Secretariat, Jammu/Srinagar; and the communication dated 04.10.2024 addressed by the Government of J&K, General Administration Department (Vigilance), to the Director, Anti-Corruption Bureau, J&K.

7. I have given my thoughtful consideration to the rival arguments advanced on both sides.

8. Keeping in view the aforesaid perusal and consideration, this Court, in the peculiar facts and circumstances of the case, is of the opinion that it may meet the ends of justice in case the petition(s) in hand are allowed and the impugned order dated 13.08.2024 passed by the learned Special Judge is set aside.

9. As hereinbefore mentioned, the Anti-Corruption Bureau, J&K, on the basis

of a preliminary inquiry conducted by it with respect to the allegations that the officers/officials of the PDD, J&K, have committed certain irregularities while implementing the Saubhagya Scheme, registered two FIRs, viz., FIR No. 3 of 2020 of Police Station ACB, Srinagar, with respect to Ganderbal District of Kashmir region, and FIR No. 4 of 2020 of Police Station ACB, Jammu, with respect to District Doda in Jammu Division, both dated 05.03.2020. It has also been hereinbefore mentioned that the investigating agency, however, extended the scope of investigation to various other districts of the UT of J&K as well.

10. Both the police stations, i.e., Police Station ACB, Srinagar and Police Station ACB, Jammu, carried out investigation with respect to the allegations contained in the respective FIRs registered by them, which culminated in the filing of two final closure reports (Ikhtetami's) with the concerned Special Courts at Srinagar and Jammu. The Special Court at Srinagar, after dealing with the final closure report dated 18.02.2022, as per the procedure accepted with the findings of the investigating agency vide its order dated 08.06.2024.

However, the learned Special Court at Jammu, after addressing the final closure report (Ikhtitami) arising out of case FIR No. 4 of 2020 dated 05.03.2020 of Police Station ACB, Jammu, placed before it, did not agree with the same and passed the impugned order dated 13.08.2024, with directions to ACB, Jammu, to conduct further investigation into the matter.

11. Case FIR Nos. 3 of 2020 and 4 of 2020, both dated 05.03.2020, are split cases registered by the ACB, J&K, to investigate the same set of allegations in a convenient manner. The Investigating Officer of case FIR No. 4 of 2020 dated 05.03.2020 of Police Station ACB Jammu, while concluding the investigation in the said FIR as “**not proved**”, has, inter alia, observed at *page-*

14 of the final closure report that, in view of the facts emerging during the course of investigation and scrutiny of the record, the officers/officials of the Electric Department, J&K, 1 to 17, mentioned therein, including the present petitioners, have committed procedural lapses by not following the SOPs/guidelines of the Saubhagya Scheme. The Investigating Officer accordingly recommended RDA against them.

12. However, the Investigating Officer, at the same time, observed that no criminal offence could be established against the accused persons mentioned in the FIR, as such, benefit under Section 169 Cr.P.C. was extended to the accused persons, namely, Shri Manohar Gupta, Chief Engineer, Projects Wing, Jammu; Shri Umesh Parihar, the then Superintending Engineer, EM & RE Circle, Kishtwar, (now retired); Shri Asgar Hussain, Superintending Engineer, EM & RE Circle, Kishtwar, (now retired); and Shri Tasaduq Hussain Sheikh, the Executive Engineer Electric Division Doda. He accordingly recommended the closure of the case as “**Not Proved**”.

13. The Investigating Officer of case FIR No. 3 of 2020, Police Station ACB, BSG, while concluding the investigation in case FIR No. 3 of 2020, Police Station ACB BSG, as, “**Not admitted**” however, recommended that RDA may be initiated against those Engineers of the Electric Division, Ganderbal, who failed to execute the works strictly in accordance with the Saubhagya guidelines, and for allowing execution of works with deficient specifications, against which a loss of Rs. 1.40 lakhs in four subdivisions of Electric Division, Ganderbal, have been found caused during the physical inspection of the said divisions.

14. The Investigating Agency also recommended that an advisory may be

issued to the PDD, J&K, with regard to poor workmanship established during the inspection of Electric Division, Ganderbal, which was in contravention to the directions/agreement, and RODIC Consultancy has failed to complete its contract agreement. That balance fee to M/s RODIC Consultancy be withheld till a satisfactory Project Completion Report is submitted by the firm, duly authenticated by the concerned Engineer-in-Charge, and that penalty, as per the terms of the reference, on account of carelessness towards the contract obligations and commitments, should be imposed on the firm.

Regarding Districts Kupwara, Baramulla and Bandipora, it has been observed by the Investigating Officer, after conclusion of the investigation that allegations of double drawls and misappropriation during the implementation of the centrally sponsored Saubhagya Scheme, (Sahaj Bijli Har Ghar Yojina) scheme the loss to the State exchequer in Electric Division, Kupwara, could not be established.

15. As regards District Anantnag, **Kashmir Division**, the Investigating Officer (IO) has observed that the diversion of **Saubhagya material** to other schemes by the Electric Division, Anantnag, was regularized by the **SLSC** and could not be considered as loss though as per the applicable guidelines, such diversion was not allowed.

16. As regards the districts of **Jammu, Samba, Udhampur and Kathua**, the IO, Police Station ACB Jammu, while concluding the investigation in **Case FIR No. 4 of 2022**, observed that, on the basis of the investigation RDA is recommended, and the part investigation of the FIR with respect to **Jammu, Samba and Kathua** was recommended to be closed as “**not proved.**”

17. With respect to the districts of **Doda, Udhampur and Ramban**, the

Investigating Officer, *inter alia*, observed that the investigation conducted so far revealed that the concerned public servants have committed procedural lapses by not following the guidelines/ SOPs and circulars in letter and spirit. He finally concluded by recommending initiation of **RDA against 17 named delinquent public servants**, besides issuance of an advisory for withholding the pending payments of **M/s Rodic Consultants Private Limited** for not delivering services as per the terms and conditions laid down in the LOA.

18. As regards the districts of **Poonch and Rajouri**, RDA was recommended by the Investigating Agency against **11 officers/officials of the Poonch Division**, as named in the report, for violation of the prescribed procedure/conditions.

19. With respect to the investigation as regards the districts of **Udhampur and Reasi**, the Investigating Officer, *inter alia*, observed that no criminality was found on the part of the public servants; however, initiation of **RDA against the delinquent officers/officials** was recommended.

20. The **Anti-Corruption Bureau, UT of J&K**, after culmination of the investigation in the twin case FIRs, as “**Not proved**” before filing of the final closure reports of 7/02/2022 before the learned Special Courts, made a communication dated **27.01.2022** to the Principal Secretary to the Government, General Administration Department, J&K, Jammu, on the basis of the findings of the investigation, with the following recommendations:

“a. That Regular Departmental Action (RDA) may be initiated against the then Engineers of Electric Division Ganderbal who failed to execute the works strictly according to Saubhagya Guidelines and for allowing the execution of works with deficient specifications against which a loss of 1.40 Lakhs in four Sub-Divisions of the Electric Division Ganderbal have been found caused during the

physical inspection of the said Division.

b. Advisory may be issued to PDD J&K with regard to poor workmanship established during the inspection of Electric Division Ganderbal which is in contravention to the contract agreement and Rodic Consultancy has failed to complete its contract agreement. The balance fee to M/S Rodic Consultants be withheld till satisfactory project completion report is submitted by the firm duly authenticated by the concerned engineer in charge and penalty as per terms of reference on account of carelessness towards the contract obligation/commitments should be imposed on the firm.”

21. The Government of J&K, Power Development Department, Civil Secretariat, Jammu/Srinagar, after initiation of RDA and consideration of the alert notice in the twin case FIRs, pursuant to the recommendations of the ACB J&K and the advice of the GAD, did the needful and issued Government Order No. 78-JK (PDD) of 2024, dated 02.05.2024. The operative paras of the order are reproduced as under:-

“ Whereas, based on the above advice of GAD, the entire matter was re-examined in the department and it was observed that verification had already been conducted at the department level by both the Managing Directors and the reports were also examined by Secretary (Technical), who was in agreement with the findings of the Managing Directors. Further, the reports were sought from various central-level agencies associated with the implementation and monitoring of the scheme viz. REC, PFC and CEA, and nothing adverse was received from any quarter. Moreover, J&K Government received a cash award of Rs. 100 crores from the Government of India for being the first amongst the special category States in the country to achieve 100% HH electrification within the given timeline; and

Whereas, the matter was further examined in the Department keeping in view all the factors mentioned above, based upon which, the following has been construed: -

i. There is no material evidence that proves wilful wrongdoing on the part of any officer/official associated with the implementation of Saubhagya scheme.

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ii. The omissions and commissions pointed out by the ACB have been after detailed verification. satisfactorily explained by both the MDs in their respective reports,

iii. The Government of India has conducted a third-party inspection of the works executed under Saubhagya scheme, along with other central sector schemes in each district, which stands uploaded on the SAKSHYA portal and is in public domain, showing no deficiency in the execution of works, which again substantiates that the works have been executed satisfactorily as per the DPR.

iv. The closure statement of the Saubhagya scheme in respect of all the Districts was prepared in February 2022, which stands

submitted to the Government of India after proper audit, certification by the CA along with necessary approval of the authorities. The said reports have been duly accepted by the Gol, and no expenditure has been booked under the scheme beyond the closure amount approved by the Gol.

Now, therefore, in light of the above facts and circumstances, there is no material evidence available on record to initiate departmental proceedings (RDA) against the officers/officials associated with the implementation of Saubhagya scheme. Hence, the matter is hereby closed.

However, the Managing Directors of the corporations will ensure that:-

a. General circular instructions are issued to all the employees of respective corporations for strict adherence to the SOPs and the observations made by the ACB in its report dated 27.01.2022, while executing works in future.

b. The officers/officials posted in the Electric Divisions of Anantnag, Kupwara & Ganderbal during the execution of Saubhagya scheme, in whose jurisdiction minor supervisory lapses were pointed out during the enquiry, be issued a "warning" to remain careful, vigilant and diligent while discharging their duties.

By order of the Government of Jammu and Kashmir.

Sd:-
Principal Secretary to the Government
Dated 2.05.2024"

22. It is also necessary to mention that the Government of Jammu and Kashmir, GAD (Vigilance), vide communication dated 04.10.2024 addressed to the Director, Anti-Corruption Bureau, J&K, took up the matter for legal advice in view of the two contradictory judgments on the same subject matter.

23. A careful perusal of the impugned order reveals that the same has the apparent trappings of a **reinvestigation order**, as also contended by Mr. Sethi, learned Senior Advocate, during the course of his arguments. The learned Special Court, while directing further investigation on the final closure report pertaining to Case FIR No. 4 of 2020, Police Station ACB Jammu, has proceeded to incriminate all the involved agencies which is apparent from the concluding part of para-46 of the impugned order, being reproduced hereunder:

“Therefore, in the light of glaring incriminating facts on the record, all the said Agencies are criminally liable for commission of offences like misappropriation of public

money, creating and using of false evidence and criminal conspiracy read with the offence of criminal misconduct as defined under the Prevention of Corruption Act, 2006.”

24. It is apparent from para-48 of the impugned order that the learned Special Court, in a way, appears to have taken cognizance in the matter and directed collection of evidence on the issues and in the manner directed by it.

25. It is also needful to mention that the learned Special Court, Srinagar, on an almost identical set of allegations and based on similar findings by the same investigating agency, concurred with the findings of the investigating agency.

26. As rightly contended by the learned counsel for the petitioners, the learned Special Court appears not to have been fully updated of the series of events that occurred with effect from February 2022, i.e., the date of filing of the closure report. The said fact was also communicated by the Government, General Administration Department (Vigilance Section), to the Director, Anti-Corruption Bureau, J&K, vide communication dated 04.10.2024.

27. As hereinbefore mentioned, the RDA was initiated pursuant to the recommendations of the ACB J&K, which led to the passing of Government Order No. 78-JK (PDD) of 2024, dated 02.05.2024, with the observations *inter alia*, that **there is no material evidence to prove willful wrongdoing on the part of any officer or official associated with the implementation of the scheme.**

28. That the omissions and commissions pointed out by the ACB have been satisfactorily explained by both the Managing Director's in their respective reports after detailed verification. That the Government of India has conducted

third-party inspections of the works executed under the **Saubhagya Scheme**, along with other Central Sector Schemes, in each district which stand uploaded on the **Sakshya Portal** and is in the public domain, showing no deficiency in the execution of the works, which, in substance, were executed satisfactorily as per the DPRs.

29. The learned Special Court, on the contrary, has, *inter alia*, observed in para- 48 (xiii) that why the Government did not take departmental action against the errant officials of the J&K PDD, as recommended by the IO of the case in the instant closure report.

30. The learned counsel for the petitioner(s), during the course of arguments, placed reliance upon the judgment of the Hon'ble High Court of Delhi in *Ajit Kumar v. State of NCT of Delhi* and contended that it is a settled proposition of law that once an employee is exonerated in departmental proceedings with respect to the same allegations, no useful purpose would be served in continuing the criminal proceedings.

It was further intimated to the Court during the course of arguments that some of the petitioners have already retired, while some are suffering on account of their due promotions, which fact is supposed to have caused mental agony and trauma not only to them but also to their families.

31. The learned counsel for the petitioners *inter alia* submitted during their arguments that we cannot lose sight of the fact that the engineers belonging to different branches especially those, employed in Government sector may at same times find themselves in difficult situations when on one hand they are inevitably required to act strictly in accordance with the law and regulations governing different works/ schemes being entrusted to them for execution and

on the other hand have to simultaneously face the brunt of the administration or of the elected public representatives for speedy completion of the same.

They contended that some *bona fide* procedural irregularities or deficiencies under guiding principles, and norms of major developmental schemes need to be considered and weighed differently, otherwise, people will refrain from joining the engineering profession, particularly in the government sector

They also contended that if the impugned order is allowed to operate, the same will engage the present petitioners for the remaining years of their life and shall become oppressive against them, especially when the investigating agency has already upon a thorough and in-depth investigation, exonerated them from the accusation of having committed criminal misconduct involving any guilty intention.

They further contended that prior preliminary inquiries (P.E.s) are desirable in respect of allegations levelled against public servants in relation to matters involving manifold intrinsic issues.

32. The investigation conducted by the ACB Jammu, culminating in the filing of the closure report in terms of the provisions of Section 173 of the Code, corresponding to Section 193 of the BNSS, followed by the RDA conducted by the Government, Power Development Department, and the simultaneous third-party inspection/audit of the works executed under the **Saubhagya Scheme**, along with other Central Sector Schemes in each district, under the directions of the Government of India, exonerates the petitioners from the accusation of commission of criminal misconduct or any conspiracy. However, the investigating agency found them responsible for violations of the terms and conditions as well as the prescribed procedure of the relevant scheme, in

connection whereof the ACB recommended initiation of RDA.

33. On the recommendation of the ACB, the Government of J&K, Power Development Department, proceeded to do the needful and issued Government Order No. 78-JK (PDD) of 2024, dated 02.05.2024, with the observations to the effect as hereinbefore mentioned, that no material evidence was found to the **proof of willful wrong doing** on the part of any Officer/official associated with the implementation of Saubhagya Scheme . The Government, however, issued general circular instructions to the Managing Directors of the Corporations, as deemed appropriate.

34. In the aforementioned backdrop, this Court is of the opinion that the present case is a fit case warranting exercise of the inherent powers vested in this Court in terms of the provisions of Section 528 of the BNSS, corresponding to Section 482 of the Code.

35. The present petitioners have already suffered the brunt of the investigation, which commenced in Case FIR w.e.f. 05.03.2020. Prior to the registration of the formal FIR, the petitioners associated with the Inquiry Officer during the preliminary inquiry proceedings for a considerable period. Even after the conclusion of the investigation, which culminated in a finding of '**Not proved**', they were again associated with proceedings during the departmental action as well as the Central Government-ordered inspections and audits.

36. The learned Special Court, in paragraph 35 of the impugned order, has *inter alia* observed that the allegations of 'Double Drawls' were not specifically addressed during the course of investigation. However, a thorough perusal of the final closure report *inter alia* reveals that this aspect was also duly

addressed

37. The learned Special Judge at Srinagar, while disposing of the final closure report bearing File No. 56-B, instituted on 18.02.2022 in respect of Case FIR No. 3 of 2020 P/S SGB Kashmir observed at para 9 of the order that based on investigation none of the allegations such as double drawal, loss to the State exchequer and exorbitance of the rates was established against the nominated accused officers of power development department Kashmir. He further observed that while examining the records of the concerned electric division, it was found that only material bills as per the rates have been paid while as execution bills are yet to be paid. That material supply agencies such as SICOP and central store PDD have their own well settled pattern of fixation of rates through bidding and quality control mechanism.

38. The learned Special Court has, *inter alia*, mentioned in the impugned order that a preliminary enquiry (P.E.) was rightly initiated upon receipt of complaints. The learned Special Court has also made reference to the said complaints. However, it is not apparent from the impugned order as to whether the learned Special Court recorded the statements of the complainants or any of them before passing the impugned order.

39. In the celebrated decision of **State of Haryana and Others v. Ch. Bhajan Lal and Others**, *AIR 1992 SC 604*, the Hon'ble Apex Court considered in detail the scope of the powers of the High Court under Section 482 of the Cr.P.C. and Article 226 of the Constitution of India to quash criminal proceedings, by referring to several judicial precedents.

40. This Court is conscious of the law laid down by the Hon'ble Supreme Court of India in **State of Haryana and Others v. Bhajan Lal and Others**,

AIR 1992 SC 604, Upkar Singh v. Ved Prakash and Others, (2004) SC 4320, and “M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, (2021) 37 CRLJ 2419, to the effect that Courts should not ordinarily interfere with criminal proceedings at the initial stage, particularly where commission of cognizable offences is apparently discernible, unless there are compelling reasons to do so, such as, where the allegations are absurd, inherently improbable or actuated by malice.

41. It has been held by the *Hon’ble Supreme Court of India in Iman Pratapgadhi vs. state of Gujrat” (2025) INSC 410*, , at para 37 of the judgment, that Section 528 of the BNSS, corresponding to Section 482 of the Cr.P.C., empowers the High Court to quash criminal proceedings even after filing of the charge-sheet and/or commencement of trial.

42. The court in the facts and circumstances of the case is of the opinion that it may meet the ends of justice in case the impugned order of the learned Special Court Jammu is set aside.

43. In the backdrop of the aforesaid discussion, the present petition(s) are allowed. The impugned order dated 13.08.2024 passed by the Court of learned Special Judge, Anti-Corruption, Jammu, while addressing the final closure report No. 01 of dated 7.2.2022 arising out of Case FIR No. 4 of 2020 of Police Station ACB, Jammu, bearing File No. 361 of 2022, titled *UT of J&K through Police Station ACB Jammu v. Shri Manhar Gupta and Others*, is set aside to the extent of the present petitioners, namely, **1. Manhar Gupta, son of Late Sh. A. R Gupta, R/o 168, Sec-D Sainik Colony, Jammu, 2. Asgar Hussain, Late Sh Ghulam Mustafa Ishrat R/o Ishrat Manzil Kishtwar, 3. Tasaduq Hussain Sheikh S/o Sh. Gh. Mustafa Sheikh R/o Village Khalu, BPO Bharla Tehsil Bhaderwah District Doda, and 4. Umesh Parihar, son of Late Shri M. R Parihar, R/o F-53 Karan Nagar, Jammu**, while

agreeing with the closure report No. 1 dated 07.02.2022 of case FIR No. 4/2020 of P/S
ACB, Jammu.

However, this order shall not be construed as granting of any permission for release of any amounts in relation to the execution of the scheme. Any such release, shall be regulated by the law governing the field, as also by the Advisory/Alert notice issued by the ACB, J&K to the J&K Government and also by any subsequent orders or instructions, issued by the Government of India or the Government of the Union Territory of Jammu and Kashmir by way of follow-up action.

44. The petition(s) stand disposed of.

(Mohd. Yousuf Wani)
Judge

Srinagar:

06.10.2026

"Ayaz"

Whether approved for reporting in law journal? Yes

Whether judgment is speaking? Yes.