Serial No. 103
Supplementary List 1

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No. 918/2026
CrlM (2085/2026)

Nisar Ahmad Rather

…Appellant/Petitioner(s)

Through: Mr. Junaid Rashid, Advocate

Vs.

UT through P/S Anti-Corruption Burea ...Respondent(s)

Through:

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

ORDER
31.10.2026

1. The petitioner, who figures as an accused in FIR No. 01/2023 registered with the Anti-Corruption Bureau, Srinagar, for the commission of an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act"), has been charge-sheeted before the learned trial court on 29.05.2024. The petitioner moved an application before the trial court seeking dismissal of the charge-sheet on the ground that the prosecution was not supported by a valid sanction as contemplated under Section 19 of the Act.

2. The principal contention urged on behalf of the petitioner before the learned trial court was that, although sanction for his prosecution had purportedly been accorded vide Government Order No. 12-JK-GAD(Vig) of 2024 dated 29.04.2024, the signatures of the

sanctioning authority appearing on the said order bore the date 24.09.2024. It was, accordingly, contended that the discrepancy between the date of issuance of the sanction order and the date appearing against the signatures of the sanctioning authority rendered the sanction legally unsustainable and vitiated the prosecution.

3. The learned trial court, upon consideration of the submissions advanced before it, dismissed the application. It observed that the charge-sheet had admittedly been presented on 29.05.2024 and, therefore, the date 24.09.2024 appearing against the signatures of the sanctioning authority could reasonably be attributed to an inadvertent or clerical error. The trial court was of the view that the discrepancy was merely technical in nature and did not, by itself, constitute a sufficient ground for declaring the sanction invalid or for dismissing the charge-sheet.

4. The petitioner had placed reliance upon the judgment of the Hon'ble Supreme Court in ***Mohd. Iqbal Ahmad v. State of Andhra Pradesh,*** AIR 1979 SC 677, to contend that a valid sanction was a prerequisite for prosecuting a public servant under the Act. The trial court, however, distinguished the aforesaid judgment on the ground that the sanction order under consideration therein did not disclose the material or circumstances forming the basis for according sanction and, consequently, raised an issue regarding application of mind by the sanctioning authority. According to the trial court, the controversy in the present case was confined to a discrepancy in the dates appearing on the sanction order.

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5. Assailing the order passed by the learned trial court, the counsel appearing for the petitioner submitted that the impugned order was legally unsustainable, inasmuch as the trial court had failed to appreciate the mandatory character of the provisions contained in Section 19 of the Act. It was contended that the requirement of obtaining a valid sanction for prosecution of a public servant is a statutory safeguard and that any infirmity affecting the validity of such sanction goes to the root of the prosecution. It was further urged that the learned trial court could not have presumed, in the absence of any supporting material, that the discrepancy in the dates appearing on the sanction order was attributable to a clerical or human error.

6. During the course of arguments, however, the counsel for the petitioner fairly conceded that the sanction order was not being assailed on the ground of non-application of mind by the sanctioning authority. The material collected during investigation, as reflected in the charge-sheet, reveals that the petitioner, who was posted as an Accounts Assistant in the Directorate of Accounts and Treasuries, Kashmir, was allegedly involved in demanding and accepting illegal gratification from the complainant. The prosecution case, in brief, is that a complaint was lodged by Abdul Rouf Mir and Zameer Ahmad on behalf of the employees of Children's Hospital, Bemina, alleging that the petitioner had demanded illegal gratification for settling an issue pertaining to the payment of two-and-a-half days' allowance admissible to the employees. It was alleged that the petitioner had initially demanded an amount of Rs. 3,000/- and, subsequently, upon being approached for release of the allowance, raised the demand to

Rs. 18,000/-. Although the complainant and other employees were initially unwilling to accede to the demand, they subsequently agreed to make the payment, whereafter a trap was laid by the Anti-Corruption Bureau. The petitioner was allegedly apprehended red-handed while demanding and accepting an amount of Rs. 18,000/- in the presence of independent witnesses, leading to the registration of the aforesaid FIR. Learned counsel for the petitioner further conceded that, although the charge-sheet had been presented before the learned trial court on 29.05.2024, the matter had not yet proceeded beyond the stage of consideration of charge and discharge.

7. In the backdrop of the aforesaid facts and the rival submissions, the controversy that falls for consideration before this Court is whether the petitioner is entitled to seek dismissal of the charge-sheet solely on the ground that the date appearing against the signatures of the sanctioning authority differs from the date mentioned in the sanction order, particularly when the proceedings before the learned trial court are yet to culminate in an order on charge or discharge. An ancillary question that arises is whether the learned trial court was justified in treating the discrepancy as an inadvertent error without undertaking a detailed examination of the circumstances in which the sanction order came to be issued.

8. There can be no quarrel with the proposition that a valid sanction for prosecution, wherever mandated by law, constitutes an important statutory safeguard intended to protect public servants against frivolous, vexatious or unwarranted prosecution for acts falling within the ambit of the relevant statutory provisions. Equally, there

can be no dispute that an accused is entitled to question the legality and validity of the sanction, including on the ground that it has been accorded by an incompetent authority, without consideration of the relevant material, or in disregard of the requirements prescribed by law.The question, however, is not merely whether such an objection is legally permissible, but whether the nature of the objection raised in the present case warrants dismissal of the charge-sheet at the present stage of the proceedings.The validity of a sanction order may undoubtedly be examined by the competent court at the stage of consideration of charge or discharge, having regard to the material placed before it. Where the objection involves disputed questions of fact, or requires examination of the circumstances attending the grant of sanction, such questions may appropriately fall for determination during trial upon consideration of the evidence adduced by the parties. The stage at which an objection concerning sanction is to be adjudicated must, therefore, necessarily depend upon the nature of the alleged infirmity and the material available on record.

9. Section 19 of the Act places an obligation upon the competent court to satisfy itself regarding the existence of a valid sanction before taking cognizance of an offence in cases to which the statutory requirement applies. The provision, however, cannot be construed to mean that every alleged irregularity or discrepancy in a sanction order must invariably result in the termination of criminal proceedings, irrespective of its nature, effect or the circumstances in which it has arisen.

10. In the present case, a sanction order purportedly issued by the competent authority is admittedly available on record. The objection raised by the petitioner is confined to the circumstance that, whereas the order bears the date 29.04.2024, the date appearing against the signatures of the sanctioning authority is 24.09.2024. The petitioner has not placed any independent material on record to establish that the sanction was, in fact, accorded subsequent to the presentation of the charge-sheet or that the order was otherwise issued in violation of the mandatory requirements of Section 19 of the Act.

11. In such circumstances, the discrepancy, though requiring consideration, cannot by itself be regarded as conclusive proof of the invalidity of the sanction. Whether the date appearing against the signatures of the sanctioning authority is attributable to an inadvertent error or reflects a substantive infirmity affecting the legality of the sanction is a matter that may be examined by the learned trial court with reference to the relevant record and, where necessary, the evidence brought before it.

12. The contention of learned counsel for the petitioner that the learned trial court could not have substituted its own assumption for a factual determination of the discrepancy is not entirely without substance. The mere circumstance that the charge-sheet was presented on 29.05.2024 does not, by itself, conclusively establish that the date 24.09.2024 appearing against the signatures of the sanctioning authority was necessarily the result of a clerical error. Such a conclusion must ultimately rest upon the material available on record.

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13. Nevertheless, the aforesaid observation does not advance the petitioner's case to the extent of entitling him to dismissal of the charge-sheet at this stage. The existence of a discrepancy in the dates, without anything further to demonstrate that the sanction was not validly accorded, cannot automatically obliterate the prosecution or render the charge-sheet non est in the eyes of law.

14. It is well settled that the question of validity of sanction may, depending upon the nature of the challenge, require examination of the relevant official record and the evidence of the sanctioning authority. The accused is not precluded from questioning the sanction during the proceedings before the learned trial court or, where the issue so requires, during trial by cross-examining the sanctioning authority or other relevant witnesses to establish that the sanction was not accorded in accordance with law.

15. Insofar as the reliance placed upon ***Mohd. Iqbal Ahmad v. State of Andhra Pradesh***(supra) is concerned, the said judgment reiterates the necessity of establishing a valid sanction in accordance with the statutory requirements. The principle enunciated therein is not in dispute. However, the said authority does not support the proposition that a discrepancy of the nature alleged in the present case must, without further examination, necessarily entail dismissal of the charge-sheet.

16. The learned trial court shall remain at liberty to examine the question of validity of the sanction at the appropriate stage, uninfluenced by any tentative observations made regarding the nature of the discrepancy. The petitioner shall likewise be at liberty to raise all

legally permissible objections concerning the sanction, which shall be considered and determined in accordance with law.

17. In view of the foregoing discussion, this Court is of the considered opinion that no ground warranting interference with the impugned order, insofar as it declines the petitioner's prayer for dismissal of the charge-sheet, has been made out. The discrepancy in the dates appearing on the sanction order, by itself and in the absence of material establishing a substantive illegality, does not justify termination of the prosecution at the present stage.

18. Accordingly, the petition, being devoid of merit, is **dismissed**.

(SANJAY PARIHAR)

JUDGE

SRINAGAR
31.10.2026
N Ahmad

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Whether the order is speaking: Yes
Whether the order is reportable: Yes