

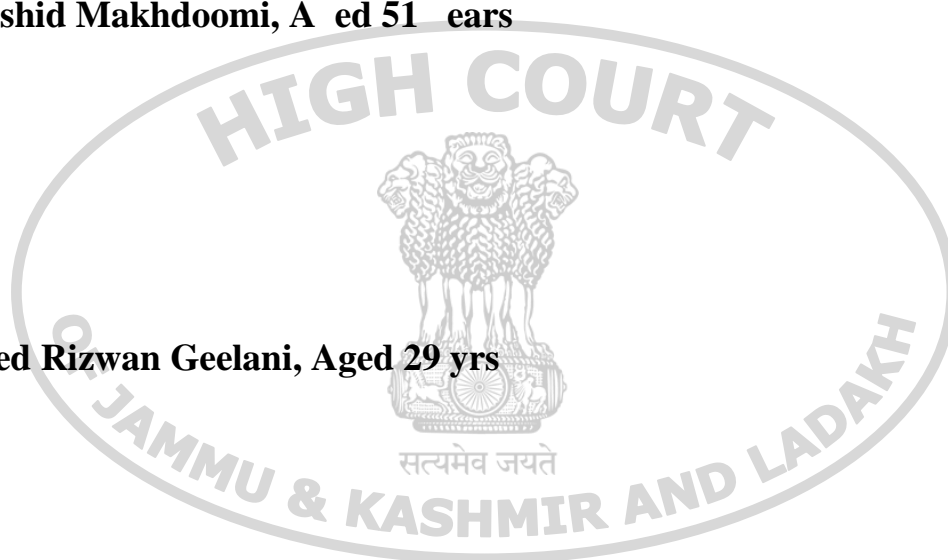
**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CRM(M) No. 634/2019
CrIM No. 1467/2019

1. **Fayaz Ahmed Kaloo, Aged 62 yrs**

2. **Rashid Makhdoomi, Aged 51 yrs**

3. **Syed Rizwan Geelani, Aged 29 yrs**



....Petitioners

Through: Mr. Navyug Sethi, Advocate

Vs

Te Krishan Ganoo,

..... Respondent

Through: Mr. C. M. Koul, Sr. Advocate with
Mr. A. R. Bhat, Advocate

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
19.04.2024

01. Publication of two news items in Daily Greater Kashmir dated 16.10.2015 & 30.12.2016 in the context of DAV School in Magarmal Bagh area of Srinagar stroked a legal course of action which landed in this Court. For the facility of reference, the said two news items so published are reproduced hereunder:-

Govt. Land provided to DAV School sold for Rs. 13 cr

Officials of Education Department accused:
Case referred to Vigilance

Srinagar, Oct 15: In yet another shocker from school education department, government land handed over to an educational institution measuring 10 Kanals has been illegally sold to a private party.

According to officials, the land was provided to DAV Trust to run a school in Magarmal Bagh area of Srinagar. However the State land has been sold to a private party seven years ago.

“There is no mention in the official records whether the institution got this land on lease or free. There is no record available in Directorate of School Education Kashmir (DSEK) either,” officials said.

They said the land has been sold for Rs. 13 crores in violation of rules. The land scam surfaced recently after the DAV management highlighted the issue of disappearance of school records following which the directorate was prompted to start

investigations into the matter.

“Some school records had gone missing due to fraudulent means by some people including officials in school education department some seven years ago,” official said.

As per officials, DAV Schools were under control of DSEK and concerned Chief Education Officer (CEO) since 1990 by virtue of various lower court orders. “After migration of minority community the school was administered by education department till September 2013” they said, adding that the DAV administration was handed over the management by virtue of a High Court order.

The DAV management had approached Vigilance department complaining that ‘officials of DSEK in 2006 arbitrarily sealed the school and handed it

over to land mafia.’ “No records were handed over by DSEK to DAV management including the land papers and other important documents,” reads a complaint submitted by DAV management.

Confirming the development, Director School Education Kashmir (DSEK) Dr. Shah Faesal said the land has been fraudulently sold to a private party in 2008. “We have referred the case to Vigilance department for in-depth investigations.”

Faesal said he visited the spot on Thursday and started demarcation of the land which was provided to DAV management for establishing a school. “It is not proved yet whether the land was given on lease or free,” he said, adding that they would wait for the Vigilance report.

Education deptt sits on encroachment of school land at Jawahar Nagar

■ Will send team to spot to assess situation : DC

SYED RIZWAN GEELANI

Srinagar, Dec 29:

The School Education department has failed to retrieve the government land from encroachers at Jawahar Nagar area here which was donated to DAV Trsut to run their school.

Sources said the land is used for construction purpose by some influential people.

Pertinently, the Director-ate of School Education Kashmir (DSEK) in October last year dissolved the managing body of DAV school Jawahar Nagar as the members of a single family had been nominated as its members.

Officials said the managing committee was dissolved after a multi-crore scam was unearthed

wherein DAV management had allegedly sold State land at Magarmal Bagh to a private property.

"The land was given on lease to run a DAV School at Magarmal Bagh Srinagar but the management had fraudulently tampered the revenue records and sold the land to a private property," the officials said.

"The land was spread over 10 Kanals for school but was sold fraudulently. There is no mention in the official records whether the institution got this land on lease or free. There is no record available in DSEK either," officials said.

They said the land was for Rs. 13 crores in "violation of rules." "An inquiry was also initiated by Deputy



Commissioner Srinagar besides a case was registered in Vigilance department," the officials said.

The Sources however said after selling land at Magarmal Bagh "illegally," illegal construction was started at Jawahar Nagar where the DAV management had earlier established a school.

"It is not confirmed whether the structure being constructed there is commercial or it will be used for some other purpose," sources said.

as it was constituted in violation of rules. play their role to get the land retrieved," the officials said.

However CEO Srinagar Arif Iqbal Malik said he was not aware of the present status of the DAV Jawahar Nagar issue.

"I am not aware about the present status of this issue. There has been no communication from past six months over the issue," CEO Srinagar said.

Meanwhile, sources said the matter was taken up with the district administration Srinagar and officials were asked to do demarcation of the government land donated to DAV for running their school.

"There was no further progress in it. It is a huge scam where district administration and revenue department were supposed to

02. By reading and reckoning the aforesaid two news items as damaging and defamatory to the reputation of the DAV Management in administration and management of the school as an institution and its premises as property, the respondent – Tej Krishan Ganjoo acting in his purported capacity as Chairman of the Management Committee DAV Public Secondary School, Jawahar Nagar, Srinagar came forward with a criminal complaint filed under section 500 of the Ranbir Penal Code alleging the aforesaid two news items being defamatory in all its intent and import.

03. A criminal complaint came to be filed on 01.03.2017 before the court of Judicial Magistrate Ist Class (Sub Judge), Jammu on file No. 48/Complaint of 2017.

04. The trial court of Judicial Magistrate Ist Class (Sub Judge), Jammu, vide an order dated 01.03.2017, came to entertain the complaint but deferred the cognizance taking and consequent issuance of process by resorting to a direction for an inquiry under section 202 of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989 and sought an inquiry report from the Sr. Superintendent of Police, Jammu.

05. Upon receipt of the requisite inquiry report, the trial Court of Judicial Magistrate Ist Class (Sub Judge), Jammu came to hold that a *prima-facie* case is made out for taking cognizance and issuance of process to the accused persons so named in the complaint and they being the Editor of the newspaper Daily Greater Kashmir, Printer/Publisher of the newspaper Daily Greater Kashmir and Author of the news article and, accordingly, directed issuance of process against the petitioners vide an order dated 03.05.2017.

06. It is against this cognizance taking order of the Judicial Magistrate Ist Class (Sub Judge), Jammu that the present

petition came to be filed by the three accused persons on 30.10.2019 under section 561-A of the Jammu & Kashmir Code of Criminal Procedure, Svt., 1989. However, before coming with the institution of the present petition, the petitioners as accused persons had come to cause their appearance in the complaint but the proceedings on the complaint file remained static as it is without further proceedings.

07. In terms of an order dated 27.12.2019, this Court in the present petition came to stay the proceedings on the file of the said criminal complaint against the accused petitioners.

08. Section 500 of the Ranbir Penal Code, Svt., 1989 penalizes a person who defames another. Defamation is defined under section 499 of the Ranbir Penal Code, Svt., 1989. For the sake of reference section 499 of the Ranbir Penal Code is reproduced herein:-

“499. Defamation — Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm the reputation of such person, is said except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person, if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

09. Section 499 of the Ranbir Penal Code, Svt., 1989 very thoughtfully correlates word “imputation” through a spoken or written words which has the intent of harming or having the potential to harm, with respect to the reputation of a “person” against whom the spoken or written words have come into picture.

10. The word “person” obtaining in section 499 of the Ranbir Penal Code. Word “person” is defined in section 6(11) of the Ranbir Penal Code and that includes any Company, or Association, or Body of Persons whether incorporated or not.

11. By this definition of person in the J&K Ranbir Penal Code, the Management Committee of an Educational Institution can also reckon itself to be a victim of defamation at the hands of a person who comes forward with any publication or oral

representation bearing imputation intending to harm or having reason to believe that such imputation will harm the reputation of such body of person identified as Management Committee of a well respected Educational Institution.

12. When this Court examines the contents of the two news items in which the intent and import is as if the management committee of the DAV Trust has sold out the school premises which is housed on a Govt. granted land and for that purpose even a figure of Rs. 13 crores as price fetched gets mentioned in the news items but without any corresponding or contemporary reference to record on the basis of which the allegations are so being stated in the news items, then surely the reputation of the Management Committee of the DAV Institution comes under bad light in the eyes of the readers/consumers of the news items. The newspaper “the Daily Greater Kashmir” being a very popular print publication of the then State of Jammu & Kashmir has gone for reading amongst the general public obviously leaving them with a *prima-facie* impression that the DAV Management has acted as if fence eating the crop. The intent and impression of the two news items as per the complainant is what constitutes the defamation and it is not for this Court to now substitute itself in place of the trial court of Judicial Magistrate Ist Class (Sub Judge), Jammu to

appreciate the defence of the petitioners in response to a criminal complaint so filed by the respondent and taken cognizance of.

13. Learned counsel for the petitioners makes reference to a judgment of this Court in the case of Aditya Raj Kaul Vs Naeem Akhter, 2021(6) JKJ 738 by reference to para 33 that the present petition deserves to be seen in the light of the position of law as settled by this Court.

14. This Court would have registered its agreement with the learned counsel for the petitioners if the print impression of two news items would have anywhere referred as to by reference to which particular Govt. record and reference to the statement of which particular Govt. official of the Education Department, the two news items were coming into public domain alleging sale of the school premises that too on the quoted amount of Rs. 13 crores, then a consideration would have been spared to entertain the petitioners in the present petition but that is not the case in the present case. Least this Court can observe is that the two news articles are too loose ended in terms of its impression that it is *prima-facie* more on the sensationalization and scandalizing side of the news items rather than on apprising the General Public about state of facts obtaining regarding which the news

items were meant to be published to enlighten the general public mind.

15. The petitioners may have a defence at their disposal on the merits of the case including locus of the petitioners, the *bona fide* of their news items on the basis of supporting Govt. record but that all is a matter of the trial for the trial court to take care of and not for this Court to exercise inherent power under section 561-A of the Code of Criminal Procedure, Svt., 1989 to decode the defence of the petitioners in answer to the criminal complaint so filed.

16. Therefore, this Court finds that this petition is misconceived and deserves to be rejected. Accordingly, the petition is **dismissed** and the trial court of Judicial Magistrate Ist Class (Sub Judge), Jammu is directed to resume the trial of the criminal complaint.

17. Connected application shall also stand **dismissed**.

(RAHUL BHARTI)
JUDGE

JAMMU
19.04.2024
Muneesh

Whether the order is speaking : Yes / No

Whether the order is reportable : Yes / No