

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 22.11.2022
Pronounced on: 02.12.2022

CRM(M) No.406/2021

RAM GOPAL MEENA ... **PETITIONER(S)**

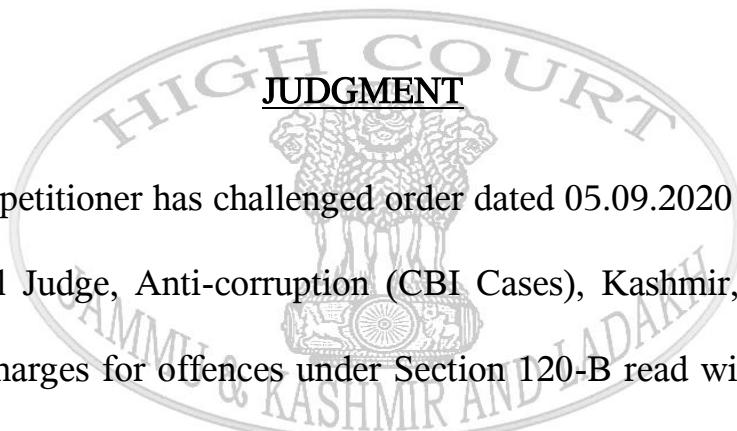
Through: - Mr. Nissar Ahmad Bhat, Advocate.

Vs.

CENTRAL BUREAU OF INVESTIGATION ...RESPONDENT(S)

Through: - Mr. T. M. Shamsi, DSGI

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



1) The petitioner has challenged order dated 05.09.2020 passed by the Special Judge, Anti-corruption (CBI Cases), Kashmir, Srinagar, whereby charges for offences under Section 120-B read with Section 420 RPC and Section 4-H read with Sections 5(2) and Section 5(1)(d) of J&K Prevention of Corruption Act have been framed against him and the co-accused.

2) It appears that pursuant to registration of FIR No.RC/1(A)/2017 dated 25.07.2017 for offences under Section 120-B read with Section 420 RPC and Section 4-H read with Sections 5(2) and Section 5(1)(d) of J&K Prevention of Corruption Act with Police Station ACB, Srinagar, the investigation was set into motion by the respondent investigating agency. After the completion of investigation, the charge

sheet for aforesaid offences came to be laid before the Court of Special Judge, Anti-corruption (CBI Cases), Kashmir, Srinagar (hereinafter referred to as the Special Court).

3) As per the prosecution case, the FIR was lodged on the basis of preliminary enquiry conducted by the respondents into the allegations that the petitioner, who was posted as Executive Engineer, CPWD, at the relevant time, along with the co-accused had entered into a criminal conspiracy with the contractor M/S Sheikh Sons to cause wrongful loss to the state exchequer and corresponding wrongful gain to others in the contract for construction of boundary wall of 9.1 kilometer for Central University, Kashmir, at Ganderbal. It was alleged that the wrongful loss to the state exchequer was caused to the tune of Rs.3.4 crore with corresponding gain to the accused. According to the prosecution case, during the year 2013, the Central University, Kashmir, had approached the CPWD, Central Division, Humhama, for the work of construction of boundary wall around the land of the University. A preliminary estimate was prepared by the CPWD which was approved by the competent authority of the University by according administrative approval for an amount of Rs.11,84,87,000/ vide its letter dated 14.01.2013. On receipt of administrative approval and expenditure sanction from the University, the petitioner who was posted as Executive Engineer at the relevant time with CPWD, Srinagar, prepared the estimate of the work and the same was processed in the office of the Chief Engineer, Central Zone, Jammu, for accord of

technical sanction of the competent authority. After the technical sanction by the Chief Engineer, NIT regarding construction of boundary wall was approved for an amount of Rs.11,47,51,471/ and the tenders were invited. The tender of M/S Sheikh Sons was accepted being the lowest one and an intimation in this regard was given by the petitioner to the contractor M/S Sheikh Sons informing him that his bid for an amount of Rs.9,38,81,717/ had been accepted and approved by the Chief Engineer.

4) According to the prosecution case, the petitioner remained posted as Executive Engineer, CPWD, from 16.07.2012 to 06.12.2013 and he had signed the contract agreement with accused Sheikh Nayeem Ahmad. It was revealed that the work of construction of boundary wall around the land of the Central University at Ganderbal was allotted to M/S Sheikh Sons Prop. Sheikh Mohammad Yaqoob but instead of said person, the contract was signed by accused Sheikh Nayeem Ahmad. It was also found that Sheikh Nayeem Ahmad partly executed sub-standard work on behalf of M/S Sheikh Sons and this was in the knowledge of the petitioner. It is further alleged that the documents submitted by M/S Sheikh Sons instead of having been attested by a Gazetted Officer, were attested under the signature of Sheikh Nayeem Ahmad who was not authorized on behalf of M/S Sheikh Sons whose proprietor was Sheikh Mohammad Yaqoob. It is further alleged that the work was not found satisfactory as per the reports of different inspecting officers as well as according to Joint Surprise Check report.

In spite of sub-standard work having been executed by the contractor, the running bills put up by Sheikh Nayeem Ahmad were passed by the petitioner, who was overall incharge of the work assigned with the task of supervising the construction of the work. According to the prosecution case, the petitioner and other co-accused were in a criminal conspiracy in the execution of the sub-standard work and thereby they caused wrongful loss to the Government exchequer and wrongful gain to the M/S Sheikh Sons.

5) The learned Special Court, after hearing the parties passed the impugned order whereby charges for the offences under Section 120-B read with Section 420 RPC and Section 4-H read with Sections 5(2) and Section 5(1)(d) of J&K Prevention of Corruption Act were framed against the petitioner and the co-accused. It is this order which is under challenge before this Court by way of the present proceedings.

6) It is contended in the petition that from the contents of the charge sheet and the material annexed thereto no offence is made out against the petitioner. It has been further contended that as per the law laid down by the Supreme Court in the case of **Lalita Kumari v. Govt. of UP & Ors., (2014) 2 SCC 1**, the preliminary enquiry had to be completed within a period of seven days but in the instant case the preliminary enquiry has been conducted for about eight months whereafter the FIR came to be registered. Therefore, on this ground alone, the petitioner is entitled to be discharged. It has also been contended that the accused, Sheikh Mohammad Nayeem, was acting on

behalf of the firm M/S Sheikh Sons, being one of its partners, as such, it cannot be stated that he had no authority to enter into a contract or to execute the work on behalf of the firm. The petitioner has placed on record a copy of the partnership deed of M/S Sheikh Sons. It has also been contended that the Department of Personnel and Trainings, which is a supervisory authority of the CBI, has not been consulted before filing the charge sheet and before granting sanction for prosecution against the petitioner. It has also been contended that before filing the charge sheet against the petitioner, it was incumbent upon the respondent investigating agency to seek the opinion of the State Vigilance Commission as the offences were allegedly committed within the territory of erstwhile State of Jammu and Kashmir. It has been further contended that no proper sanction for prosecution against the petitioner has been granted, inasmuch as the order of sanction does not make a mention about the offence under Section 4-H of the J&K PC Act though he has been prosecuted for the said offence. Lastly, it has been contended that the respondent investigating agency has no jurisdiction to investigate the offence as the erstwhile State of Jammu and Kashmir had not granted any general consent in terms of Section 6 of Delhi Special Police Establishment Act.

7) Heard learned counsel for the parties and perused the material on record, including the trial court record.

8) Before dilating upon the contentions raised by learned counsel for the petitioner, it would be apt to notice the law relating to framing

of charge/discharge of an accused. In this regard, learned counsel for the petitioner has relied upon the following judgments of the Supreme Court:

- (I) **State through Central Bureau of Investigation vs. Dr. Anup Kumar Srivastava, (2017) 15 SCC 560;**
 - (II) **Dipakbhai Jagdishchandra Patel v. State of Gujarat and another, (2019) 16 SCC 547;**
- 9)** In **State through Central Bureau of Investigation vs. Dr. Anup Kumar Srivastava, (2017) 15 SCC 560**, the Supreme Court has observed as under:

"18. Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under the provisions."

- 10)** In **Dipakbhai Jagdishchandra Patel v. State of Gujarat and another, (2019) 16 SCC 547**, the Supreme Court has, while laying down

upon the guidelines regarding the matters which are to be considered by the Courts at the stage of framing of charge, observed as under:

*"21. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the *prima facie* view that the accused has committed the offence."*

11) From the foregoing enunciation of law on the subject, it is clear that at the time of framing of charge, the Court is expected to consider all the documents referred to in Section 173 of the Cr. P. C and if after considering those documents and hearing the parties, the Court finds that the charge against the accused is groundless, an order of discharge has to follow but if the Court finds that there is ground for presuming that the accused has committed an offence triable by the said court, then charge has to be framed against the accused. This is clear from the language of Section 251-A of the J&K Cr. P. C, which is applicable to the instant case.

12) While considering the question of framing of charge, the Court is certainly not to act as a post office. It has to sift the material available before it but the same has not to be done meticulously in the manner as is required to be done after a full-fledged trial. The court has to be satisfied as to whether from the material on record a case is made out against the accused and it is not expected to consider as to whether the accused can be convicted on the basis of such material. Even a strong suspicion is sufficient to frame charge against the accused.

13) Adverting to the instant case, it has been alleged by the prosecution that the petitioner, in his capacity as Executive Engineer, CPWD, prepared the estimate and sent the same to the Chief Engineer for approval. There is no denial to this fact. According to the prosecution case, the successful bidder was M/S Sheikh Sons Proprietor Sheikh Mohammad Yaqoob, meaning thereby that the bid was allotted in favour of a sole proprietor concern owned by Sheikh Mohammad Yaqoob. As per the material on record, the contract has been signed by Sheikh Mohammad Nayeem and not by Sheikh Mohammad Yaqoob. The material on record further shows that the petitioner was associated with the matters relating to signing of the contract. The petitioner claims that accused Sheikh Mohammad Nayeem was authorized to sign the contract on behalf of M/S Sheikh Sons and that he was a partner of the said firm. A copy of the partnership deed has been placed on record. The prosecution claims that the contract was allotted to a proprietary concern and not to a partnership firm. If that is so, then there had to be

an authority on behalf of owner of the proprietary concern, in favour of accused Sheikh Mohammad Nayeem, authorizing him to act on behalf of the proprietary concern. No such authority is on record of the challan nor the petitioner has placed any such authority on record during these proceedings. Thus, *prima facie*, it appears that there is material on record to suggest that the contract on behalf of M/S Sheikh Sons has been executed by a person who was not authorized to do so and the petitioner was in the thickness of the things during the process of execution of the contract.

14) Another allegation against the petitioner is that the quality of the work executed was sub-standard as had been reported by the officers who had inspected the work and the same was also found during the Joint Surprise Check. There is material on record to suggest that the petitioner was responsible for supervision of the work and, thus, he failed to exercise proper supervisions during execution of the work. Not only this, he released the payment for execution of the work in favour of accused No.9 by approving several running bills. Thus, there is sufficient material on record to show the complicity of the petitioner.

15) It has been contended by learned counsel for the petitioner that there is no evidence on record with regard to the fact that the petitioner was involved in the conspiracy. In this regard, besides relying upon the ratio laid down by the Supreme Court in **Dr. Anup Kumar Srivastava's case (supra)**, learned counsel has relied upon the judgment of Delhi High Court in the case of **A. K. Ganju vs. CBI (CRL. M. C**

No.2384/2011 decided on 22nd November, 2013). In both these judgments, the Courts have explained that to constitute an offence of conspiracy, meeting of two or more persons for doing an illegal act or an act by illegal means is a condition precedent. It has been further laid down in these judgments that existence of conspiracy is to be deduced from the circumstances and each circumstance should be established by reliable evidence so that the circumstances form a chain of events from which the only conclusion should be against the accused.

16) There can be no dispute to the proposition of law laid down in the aforesaid two judgments. The meeting of two or more persons for doing an illegal act is a condition precedent for constituting the conspiracy but it is not necessary that all the conspirators must know each and every detail of the conspiracy nor is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The question whether a person is involved in a criminal conspiracy can be inferred from the circumstances established from the evidence on record because the conspiracies are not an open affair.

17) In the instant case, as already noted, the petitioner was involved in the process of finalizing the contract between the lowest bidder and the Government and the contract was executed by an unauthorized person on behalf of the contractor. Another circumstance regarding which there is material on record is that sub-standard work was executed and the petitioner was responsible for supervision of the

work. Besides this, he released payments in favour of the contractor through an unauthorized person, despite the fact that the work that was executed was not of optimum quality. All these circumstances, *prima facie*, show that the petitioner was part of the conspiracy of causing loss to the State exchequer and corresponding gain to the contractor which constitutes an offence under Section 5(2) of the J&K PC Act.

18) So far as the contention of the petitioner that the respondent has consumed about eight months in conducting preliminary enquiry before registering the FIR, which goes against the spirit of law laid down by the Supreme Court in **Lalita Kumari's** case and, as such, the charge could not have been framed against the petitioner, is concerned, the same is without any merit. It is true that in **Lalita Kumari's** case (*supra*), the Supreme Court has observed that preliminary enquiry should be completed within a period of seven days yet, having regard to the nature of offences punishable under the provisions of Prevention of Corruption Act, it is necessary to procure, peruse and scan necessary records which generally run into thousands of pages. It is practically impossible to conclude the preliminary enquiry in such cases within a short period of seven days. In the instant case also, the respondent investigating agency had to procure the records from the CPWD and Central University, Kashmir, scan the said records and thereafter meticulously peruse the same before registering the FIR. In these circumstances, the time taken in concluding the preliminary enquiry does not appear to be unreasonably long. Even otherwise, the petitioner

has not been able to point out anything to show that the time taken in completion of the preliminary enquiry has caused any prejudice to him. In my considered opinion, merely because preliminary enquiry has taken a long time to complete, it cannot vitiate the whole proceedings, particularly when no prejudice has been caused to the accused by such act of the enquiry officer.

19) It has been next contended by learned counsel for the petitioner that without consulting the Department of Personnel and Trainings, the respondent investigating agency could not have prosecuted the petitioner. The contention raised is without any substance for the reasons that there is no requirement of law that before prosecuting an accused of CPWD, the Department of Personnel and Training is to be consulted. As per the provisions of Vigilance Manual, 2017, it is only if there is a difference of opinion between advices of Central Vigilance Commission and the concerned department as regards the grant of sanction for prosecution against a public servant that the issue has to be resolved by referring the matter to the Department of Personnel and Training. In the instant case, there is nothing on record to show that there was any difference of opinion relating to advice for grant of sanction for prosecution in respect of the petitioner between Central Vigilance Commission and the CPWD. Therefore, there was no need for the respondent investigating agency to refer the matter to the Department of Personnel and Trainings. The argument of learned counsel for the petitioner in this regard is without any merit.

20) It has also been contended by learned counsel for the petitioner that because the offences were alleged to have been committed in the erstwhile State of Jammu and Kashmir, as such, State Vigilance Commission was required to be consulted in the matter. However, the learned counsel has not been able to refer to any Statute, rule or circular having the force of law which obliges the CBI to seek the opinion of State Vigilance Commission in the matters relating to prosecution of public servants for offences under J&K Prevention of Corruption Act. The argument is without any basis.

21) Next it has been argued by learned counsel for the petitioner that there was no general consent given by the erstwhile State of Jammu and Kashmir in terms of Section 6 of Delhi Special Police Establishment Act, granting permission to CBI to investigate the offences of the nature which are subject matter of the instant case. In this regard, it is to be noted that vide communication S-253/57-PD dated 7th May, 1958, addressed by Secretary to the Government of Jammu and Kashmir, to the Deputy Secretary to Govt. of India, Ministry of Home Affairs, New Delhi, general consent in terms of Section 6 of the Delhi Special Police Establishment Act has been granted to the exercise of powers by Delhi Special Police Establishment in the State of Jammu and Kashmir for investigation of a number of offences, including the offences punishable under the J&K PC Act. The matter in this regard is no longer res integra, inasmuch as a Division Bench of this Court in the case of Lt. Col. H. N. Tripathi vs. State, 1988 CriLJ 582, followed by Sushil

Kumar Khajuria vs. State, 2000 Cri.L.J 682, and in the recent case of **Raj Kumar Gupta and others vs. Union of India & Others**, 2021 SCC Online J&K 436, it has been held that Central Bureau of Investigation had the jurisdiction to investigate the offences, including certain offences under the provisions of J&K PC Act committed within the jurisdiction of erstwhile State of Jammu and Kashmir.

22) Lastly, it has been argued that though the petitioner has been prosecuted for the offences under Section 4-H of the J&K PC Act besides other offences but there is no mention of said offence in the sanction order. On this ground, it is urged that framing of charge against the petitioner is not sustainable in law as the sanction order itself is defective.

23) The argument raised by learned counsel for the petitioner is without any merit for the reason that a perusal of the order of sanction for prosecution of petitioner reveals that the sanctioning authority has duly applied its mind to the material produced before it whereafter it has granted sanction for prosecution of the petitioner in respect of the acts and omissions which are subject matter of the said sanction order. Mere omission to make mention of a particular offence, though allegations contained in the sanction order constitute such offence, would not make the order of sanction illegal. In this regard I am supported by the judgment of the Supreme Court in the case of **Prakash Singh Badal vs. State of Punjab and others**, (2007) 1 SCC 1. In the said

case the Supreme Court has, while dealing with a similar issue, observed as under:

"47. The sanctioning authority is not required to separately specify each of the offence against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalized guidelines in that regard."

24) Again, in the case of **State of Bihar and others vs. Rajmangal Ram**, (2014) 11 SCC 388, the Supreme Court has, while considering this aspect of the matter, observed as under:

"6. In a situation where under both the enactments any error, omission or irregularity in the sanction, which would also include the competence of the authority to grant sanction, does not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course a failure of justice has occurred, it is difficult to see how at the intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error, omission or irregularity in the sanction order without arriving at the satisfaction that a failure of justice has also been occasioned. This is what was decided by this Court in State by Police Inspector vs. T. Venkatesh Murthy[1] wherein it has been inter alia observed that,

"14.Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceeding unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice."

7. The above view also found reiteration in Prakash Singh Badal and Another vs. State of Punjab wherein it was, inter alia, held that mere omission, error or irregularity in sanction is not to be considered fatal unless it has resulted in failure of justice. In Prakash Singh Badal (supra) it was further held that Section 19(1) of the PC Act is a matter of procedure and does not go to the root of jurisdiction. On the same line is the decision of this Court in R. Venkatkrishnan

vs. CBI. In fact, a three Judge Bench in State of M. P. vs. Virender Kumar Tripathi while considering an identical issue, namely, the validity of the grant of sanction by the Additional Secretary of the Department of Law and Legislative Affairs of the Government of Madhya Pradesh instead of the authority in the parent department, this Court held that in view of Section 19 (3) of the PC Act, interdicting a criminal proceeding mid-course on ground of invalidity of the sanction order will not be appropriate unless the court can also reach the conclusion that failure of justice had been occasioned by any such error, omission or irregularity in the sanction. It was further held that failure of justice can be established not at the stage of framing of charge but only after the trial has commenced and evidence is led (Para 10 of the Report)"

25) In view of what has been laid down by the Supreme Court in the aforesaid judgments, it is clear that merely because a particular section of law has not been mentioned by the sanctioning authority in the order of grant of sanction does not vitiate the criminal proceedings and it is not a matter which goes to the root of the jurisdiction of the trial court. The argument of the learned counsel for the petitioner is, therefore, without any substance.

26) For the forgoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.

27) A copy of this judgment be supplied to the learned Special Court for information and compliance.

(SANJAY DHAR)
JUDGE

Srinagar,
02.12.2022
"Bhat Altaf, PS"

<i>Whether the order is speaking:</i>	Yes/No
<i>Whether the order is reportable:</i>	Yes/No