
(2022) 09 J&K CK 0052

Jammu And Kashmir High Court

Case No: Criminal Miscellaneous No. 826, 2328 Of 2021

Shafiq Ahmed

APPELLANT

Vs

UT Of J&K And Another

RESPONDENT

Date of Decision: Sept. 16, 2022

Acts Referred:

- Jammu And Kashmir Prevention Of Corruption Act, 1949 - Section 5(1)(d), 5(2)
- Jammu And Kashmir State Ranbir Penal Code, 1989 - Section 120B, 201

Hon'ble Judges: Rajnesh Oswal, J

Bench: Single Bench

Advocate: Muzaffar Iqbal Khan, Raman Sharma

Final Decision: Dismissed

Judgement

Rajnesh Oswal, J

1. Through the medium of the present petition, the petitioner has assailed the order dated 28.10.2021 passed by the court of learned Additional

Sessions Judge, Rajouri (hereinafter to be referred as the trial court) whereby the petitioner has been charged for commission of offences under

Sections 5 (1) (d) and section 5(2) of J&K Prevention of Corruption Act, Svt. 2006 read with Section 120-B and 201 of Ranbir Penal Code.

2. The ground stated in the present petition is that even if the entire charge-sheet including the statements of the witnesses is taken to be true on its

face value, without questioning the veracity of the statements as well as the material collected in the form of evidence, no offence alleged against the

petitioner is made out.

3. Mr. Muzaffar Iqbal Khan, learned counsel appearing on behalf of the petitioner vehemently argued that the entire controversy narrows down to the

fact that the petitioner is involved in procedural irregularity, norms and rules applicable for attestation of alleged mutations and there is no criminality

involved in the act of attestation of mutation so far as the petitioner is concerned. He placed reliance upon the judgment of the Apex Court in case

titled "Sajjan Kumar vs. CBI" 2010 (9) SCC 368.

4. Mr. Raman Sharma, learned AAG vehemently argued that the petitioner in connivance with Zaffar Iqbal-Patwari Halqa Degwar/Ajote, Tehsil

Haveli, District Poonch has attested the mutation of the State/Forest land in favour of the private persons. He further argued that the act of the

petitioner does not amount to the procedural lapses, but in order to give undue benefit to the private persons, he in connivance with the aforesaid

Patwari has attested the mutation and destroyed the Roznamcha.

5. Heard and perused the record.

6. The brief facts necessary for disposal of the present petition are that a written complaint was filed against Zaffar Iqbal-then Patwari Halqa

Degwar/Ajote, Tehsil Haveli, District Poonch that he has issued Fard Intikhab in respect of Forest/State land to the villagers, who further sold the land

to the land grabbers from Degwar to Ajote Haveli. During the verification of the said complaint it was found that Zaffar Iqbal- then Patwari Halqa

Degwar/Ajote, Poonch under a well planned conspiracy hatched with other revenue officers/officials at the relevant time, by abusing their official

positions, illegally prepared mutation No. 1013 under LB-6/C of 1958 for the land measuring 05 Kanals comprising Khasra No. 430, land measuring 09

Kanals and 10 Marlas comprising Khasra No. 454/1, land measuring 02 Kanals and 10 Marlas comprising Khasra No. 1387/455 and land measuring

02 Kanals and 10 Marlas comprising Khasra No. 1387/455 (Total-19 kanal -10 marlas) of village Degwar, Maldialian in favour of Nazir Hussain S/o

Fazla Gujjar R/o Deh. The mutation was attested by the petitioner-Shafiq Ahmed, then Assistant Commissioner Revenue, Poonch on 03.06.2014. It

was further revealed that mutation No. 882 dated 04-03-2015 under LB-6/C of 1958 and mutation No. 971 dated 24-03-2015 under Section 432 of

1966 for the land measuring 05 Kanals 15 Marlas falling under Khasra No. 474 of Village Ajote, Tehsil Haveli, District Poonch were also recorded

illegally by Zaffar Iqbal, then Patwari Village Degwar/Ajote, Tehsil Haveli, District Poonch and further attested by the petitioner-Shafiq Ahmed, then

Assistant Commissioner Revenue, Poonch in favour of Masood Ahmed S/o Mohd. Shafi Gujjar R/o Chandak, Poonch. These mutations were illegally

recorded and attested by above mentioned revenue officials/officers, thereby conferring ownership rights upon the beneficiaries, whereas none of

them at any point of time was in continuous possession of the said State/Forest land in the year 1957-58, which is a pre-requisite condition before

proceeding under LB-6/C of 1958 and S-432 of 1966. Thereafter, a formal FIR bearing No. 45/2018 was registered. During the course of

investigation, it was found that though both the mutations bearing Nos. 882 and 1013 have been attested under LB-6/C of 1958, but the revenue record

available in the files does not show any entry in the name of beneficiaries since 1957-58, which is a pre-requisite condition enshrined in the rules/

norms of the said order. In the instant case the Mutating Officer has not followed the various conditions while attesting the mutations. The accused

Patwari concerned has effected entries upon the "Parat Sarkar" and mutations have been attested by the accused-Assistant Commissioner

Revenue, Poonch without any report from the concerned officials/officers i.e. Girdawar, Naib-Tehsildar and Tehsildar, which itself demonstrates that

the petitioner in connivance with the Patwari concerned under a well planned conspiracy with the beneficiaries, by abusing their official positions

conferred undue benefits upon the persons to which they were not entitled to. It was also found that the daily diary of the Patwar Halqa-

Ajote/Degwar and Maldialian has also been found not maintained for the period of posting of Zaffar Iqbal-Patwari in the said Patwar Halqa. The

“Parat Sarkar” of the mutations so entered and attested by both the accused revenue officers/officials has wilfully and dishonestly been destroyed

and not deposited in the Tehsil office after their execution on papers by the said accused. It is also stated that the accused were given opportunity to

explain their conduct, but they could not controvert the criminal charges established against them.

7. In the charge-sheet, the allegations against the petitioner are that he remained posted as Assistant Commissioner Revenue, Poonch with effect from

27.07.2013 till 31.01.2016. During this period, the mutations in question have been attested by him in furtherance of criminal conspiracy hatched with

Sh. Zaffar Iqbal- then Patwari Halqa Ajote/Degwar Maldialian, Tehsil Haveli, District Poonch and the private beneficiaries, as both the beneficiaries

in whose favour he has attested the mutations were not in possession of the land since 1957-58 at any point of time, which is a pre requisite condition

for attestation of mutations and conferment of proprietary rights in Government Order No. LB-6/C of 1958 and S-432 of 1966. He in connivance with

Zaffar Iqbal-then Patwari and others further destroyed the “Parat Sarkar” document wilfully with criminal intent to hide their misdeeds.

8. The learned trial court after considering the submissions/arguments made by both the parties, framed the charge against the petitioner vide order

dated 28.10.2021.

9. Before appreciating the contention of the petitioner, it requires to be mentioned that at the time of framing of charge, defence of the accused is not

required to be considered. The court has to examine whether there is prima facie evidence or material against the accused in support of the allegations

or not. If there is material to support the allegations, then the charge has to be framed and the accused is well within his right to lead evidence in

rebuttal to the prosecution evidence during the course of trial.

10. In the instant case, the allegations against the petitioner are that he in connivance with the Patwari, in order to grant undue benefit to the private

persons, attested the mutations in their favour under LB-6/C of 1958 and S-432 of 1966 and further he in connivance with the Patwari destroyed the

Ã¢â¬ÅParat SarkarÃ¢â¬Å document with the intention to hide their misdeeds.

11. Section 5(1)(d) provides that a public servant is said to commit the offence of misconduct if he, by corrupt or illegal means or by otherwise abusing

his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

12. The petitioner, having been posted as Assistant Commissioner Revenue, was expected and required to peruse the record before attesting the

mutations and that too after getting the report from the revenue officials other than Patwari also. More so, the non availability of the Ã¢â¬ÅParat

SarkarÃ¢â¬Å, that as per the prosecution has been destroyed by the petitioner along with the concerned Patwari, further gives rise to grave suspicion so

far as the petitioner is concerned. The petitioner has abused his official position in granting the undue benefits to the private persons, to which they

were never entitled to and, as such, at this stage it cannot be said that there is no evidence against the petitioner demonstrating criminal misconduct on

his part.

13. The contention of the petitioner that there was only procedural lapse on the part of the petitioner, cannot be considered at this stage and at the

most, the same amounts to defence and can be raised during the course of trial by the respondent.

14. Viewed thus, there is no merit in the present petition and the same is, accordingly, dismissed.