

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRR No. 49/2017
CrIM No. 947/2022

Reserved on: **19.12.2023**

Pronounced on: **28.12.2023**

**State(now UT) of Jammu & Kashmir through
SHO Police Station Panthachowk (Srinagar)**

...Petitioner/Appellant(s)

Through: Mr. Sajjad Ashraf, GA.

Vs.

**1. Parvaiz Ahmad Bhat
S/O Ali Mohammad Bhat**

**2. Ali Mohammad Bhat
S/O Sona ullah Bhat**

Both residents of Athwajan Srinagar

**3. Syed Imtiyaz Andrabi (Patwari)
S/O Nazir Ahmad Andrabi
R/O Hazratbal**

...Respondent(s)

Through: Mr. Musaib Bhat, Advocate vice
Mr. Shuja ul Haq, Advocate, for R-1 & 2.
Mr. B.A.Bashir, Sr. Advocate with
Ms. Falak Bashir, Advocate, for R-3.

CORAM:

HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. The instant Criminal Revision has been filed by the petitioner against the Order dated 13.06.2017 (for short 'the impugned order') passed by the court of learned 1st Additional Sessions Judge Srinagar (for short 'trial court'), in a case titled *State Vs. Parvaiz Ahmad Bhat & Ors.*, arising

out of FIR No.43/2009 registered at Police Station Panthachowk, for the commission of offences punishable under Sections 420, 467, 120-B RPC, whereby the respondents, as accused, were discharged from the aforementioned offences.

2. The impugned order has been assailed on the ground that the order has been passed against the facts and circumstances of the case and contrary to law; that the trial court has returned the finding upon the complaint treating it as civil matter/dispute, which is erroneous, inasmuch as, there was sufficient material on record to charge the respondents for the commission of aforementioned offences; that the trial court has not appreciated the most important aspect of the case to the extent that if there was a sale-deed already executed in the year 1990 in favour of the respondent No.1 and 2 and same was within the knowledge of respondent No.3, why mutation had been affected on the basis of alleged 'oral gift' in favour of respondent No.2 in the year 1996, that too when the testator had already died in the year 1995; that the trial court has erroneously held that there was no fake document, but the mutation of the land in favour of respondent No.2 was done by respondent No.3 by manipulating the revenue records and in contravention of Rules, in connivance with respondent No.1 and 2; that there was sufficient incriminating material and evidence on record to establish involvement of accused in cheating and dishonestly delivery of property, forgery of valuable document and criminal conspiracy in connivance to each

other, as such, there was no occasion for the trial court to discharge the respondents.

3. Learned counsel for the petitioner while reiterating the grounds taken in the memorandum of Revision Petition, has argued that the respondent No. 1 and 2, with the active connivance with respondent No.3, who was Patwari of the local halqa, had got the mutation attested on the strength of 'oral gift' made by the grandfather of the donee i.e., respondent no.1 in the year 1996, whereas the fact of the matter is that the donor had expired in the year 1995, as such, there was no occasion to act upon the oral gift made by the deceased and that the respondent no.3 has also retained 'parat sarkar' of the mutation at his home instead of his office, which clearly indicates that the respondents were in hand and glove with each other in committing the offences, which had been proved to have been committed by them during the investigation and the charge-sheet had been laid against them.
4. Mr. Sajad Ashraf, further argued, that the sale-deed had been executed in the year 1990 with regard to the same land between the same parties, therefore, in presence of the 'sale-deed' having already been executed, there was no question of any 'oral gift' for the same property and the respondents 1 and 2, by hatching a criminal conspiracy with respondent No.3, who was the Revenue Official, got the land in question mutated in favour of respondent No.1. It was further argued that the property having been already devolved on the

strength of sale-deed, holding of the trial court that there was no occasion in making reference of gift deed and acting on that mutation was attested, is not understandable, as such, it was prayed that the impugned order be set aside with a direction to the trial court to proceed further in the matter after framing of charge against all the respondents, so that they are brought to justice.

5. Learned counsel, appearing for the respondent No. 1 and 2, on the other hand, argued that the complaint was lodged by the complainant -Ghulam Nabi Bhat but that complaint had not disclosed as to what was the fake document, acting on which, the mutation was attested, therefore, in absence of any fake document, no offence can be said to have been made out under Section 467 RPC, of which the respondents had been charged by the prosecution after investigation. He further argued that when there was the 'sale-deed' dated 23.08.1990 with regard to the same land, it cannot be said that the respondents were by any means involved in the commission of offences by seeking attestation of the mutation on the basis of 'oral gift deed', as the same could have been otherwise attested on the strength of the sale-deed.
6. Mr. B.A.Bashir, learned senior counsel appearing for respondent No.3, argued that the prosecution has also placed on record the statement of PW-Ghulam Qadir Gujri, recorded in terms of Section 164 CrPC, in which he had clearly deposed that infact the mutation had been recorded by him as Office Assistant, as per the directions of Tehsildar

concerned. He further argued that when one of the prosecution witness namely Ghulam Qadir Gujri, had himself stated that it was he who had recorded mutation under the directions of the then Tehsildar, there can be no question of involvement of respondent No.3 -Patwari in affecting any mutation. He then argued that the prosecution had utterly failed to substantiate as to why PW- Ghulam Qadir Gujri, who was the author of the mutation, and the then Tehsildar, who had attested the mutation, had not been arrayed as accused in the case and had been let-off by making the respondent No.3 a scapegoat in the case. His further argument is that the allegation regarding retaining the 'parat-e-sarkar' at his home by respondent No. 3, as a Government Official, at the most, can be treated as a matter of misconduct as per the Service Conduct Rules but certainly cannot be shown as any criminal offence so as to face prosecution.

7. Heard, perused the record and considered.
8. It is trite law that application of judicial mind being necessary to determine, whether a case has been made out by the prosecution for proceeding with trial, and at this stage, it would not be necessary to dwell into the pros and cons of the matter by examining the defense of the accused. At that stage, the trial judge has to merely examine the evidence placed on record, by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of material on charge sheet. The nature

of the evidence recorded or collected by the investigating agency or the documents produced, in which, *prima facie*, it reveals that there are suspicious circumstances against the accused, so as to frame a charge, would suffice, and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material, there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

9. It is settled principle of law that at the stage of considering charge / discharge, the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary for the alleged offence.

10. Hon'ble Supreme Court of India in '**State of Tamil Nadu Vs. N. Suresh Rajan And Ors.**' reported as (2014) 11 SCC 709, adverting to the earlier propositions of law, on this subject, held as under:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may

sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

- 11.** The factual matrix of the case is that the prosecution witness No.1 -Ghulam Nabi Bhat had lodged a complaint on 30.05.2009 in the Police Station Panthachowk, alleging therein that he is a share-holder of the property viz. 08 marlas of land falling under Survey No.81 Khewat No.16 situated at Athwajan, being his ancestral property; that brother of the complainant namely Ali Mohammad Bhat and

his son Parvaiz Ahmad Bhat -respondent no. 1 and 2 herein, in connivance with respondent no.3- Patwari concerned as well as other employees of the Revenue Department prepared a fake document and by this act have grabbed the share of the complainant; that the document as alleged, in this behalf was fabricated in the year 1996 i.e., after the death of complainant's father which took place on 15.04.1995.

- 12.** The appellant-Police registered the case FIR No.43/2009 under Sections 420, 467, 120-B RPC, and necessary investigation was set in motion; that mutation register and 'Parat-e-Patwar' were obtained from respondent No.3 - Patwari concerned and was seized; that statements of witnesses were recorded; that during investigation respondents 1 and 2 were found involved and, as such, were arrested; that subsequently allegations against respondent No.3 -Patwari concerned were also established; that during the enquiry/investigation, respondent No.3 was claimed to have disclosed that he had registered the mutation No. 1355 of 1994 on the basis of an 'oral gift' and the then Tehsildar got the mutation recorded in the 'Parat-e-Sarkar' through a Revenue Official PW -Ghulam Qadir Gujri; that the respondent no.3 has kept the 'Parat-e- Sarkar' at his home in his own custody instead of consigning the same to the records; that with the intention to grab the property of the complainant, respondents have got the mutation No. 1355

registered, clandestinely, in favour of respondent no.2 on the basis of oral gift.

13. The trial court, instead of framing charge against the accused, discharged them vide order dated 13.06.2017, impugned herein, as such, the appellant herein is aggrieved of the said order and seeks its quashment.

14. On a keen consideration of the complaint, which was based to lodge FIR, it reveals that the complainant himself was not sure, as to how the respondents had hatched a criminal conspiracy, what document was forged and how he was cheated. On one hand, he, during investigation admitted, with regard to the land in question to which he claimed his share on inheritance from his father, that the same had been sold to respondent No.1 by his father, who happened to be vendee's grandfather in the year 1990. In view of the transfer of the land in question, there was no question of cheating him, so as to attract commission of offence punishable under Section 420 RPC. In absence of any document having been forged, there is no evidence with regard to commission of forgery punishable under Section 467 RPC and in absence of any material with regard to the afore-stated offences, the commission of criminal conspiracy punishable under Section 120-B RPC, is also not made out.

15. Having regard to the reasons and discussions made hereinabove, the Revision Petition filed by the appellant, is found to be devoid of any merit and substance and does not call for any interference by this Court. The finding recorded by the trial court, to the extent of 'sufficient material not available to proceed against the accused

person for trial', for any of the aforesaid offences, is, thus, maintained and upheld.

16. Trial court record be sent down, along-with a copy of this judgment.

17. Revision Petition, along-with interim application(s), is, dismissed, accordingly.

**(M. A. CHOWDHARY)
JUDGE**

Srinagar
28.12.2023
Muzammil. Q

Whether the Judgment / Order is Reportable:

Yes / No

Whether the Judgment / Order is Speaking:

Yes / No

