

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...
CRM(M) no.129/2025

Shahid Majeed Kakroo

.....Petitioner(s)

Through: Mr M. S. Reshi, Advocate

Versus

UT of J&K and others

.....Respondent(s)

Through: Mr Mohsin Qadri, Sr. AAG

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL JUDGE

ORDER

30.07.2025

1. Quashment of FIR no.28/2010 of police station Vigilance Organization Kashmir, registered under Sections 5(1)(c), 5(1)(d), 5(2) of J&K Prevention of Corruption Act read with Section 120-B, 409, 468 and 471 RPC, qua petitioner on the grounds made mention of in instant petition preferred by him under Section 528 of Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS).
2. The case set up by petitioner is that it had been vide Government Order no.971-GAD of 2004 dated 23rd July 2004, that he has come to be appointed as Accounts Officer (Probationer) in the pay scale of Rs.7500-250-12000 by the General Administration Department. He was then posted in Finance Department. By Government Order no.373-F of 2006 dated 19th December 2006, he was thereafter and posted at Srinagar Development Authority as Accounts Officer. Petitioner was vide Order No. 224-F of 2009 dated 1st October 2009, he was

transferred and posted as Chief Accounts Officer in the office of Chief Engineer, I&FC, Kashmir Srinagar. By virtue of Order no.201-F of 2010 dated 7th July 2010 petitioner was regularized as Chief Accounts Officer in the pay band of Rs. 15600-39100+GP 6600/- w.e.f. 01.10.2009, by respondent no.2. He was vide Order No. 279-F of 2011 dated 9th December 2011 was transferred and posted as Chief Accounts Officer, to the Directorate of Health Services, Kashmir. It had been in terms of Order no.238-F of 2012 dated 19th October 2012, that petitioner was transferred and posted as Deputy Director (Central) in the office of respondent no.2. By Order no.158-F of 2013 dated 8th July 2013, petitioner was transferred and posted as Financial Advisor/CAO in Srinagar Municipal Corporation, Srinagar, where he worked upto 31st December 2016. Then, he from 1st January 2017 served as Treasury Officer, Sadder Treasury Officer, Srinagar, up to 31st January 2020. From 1st February 2020, petitioner was placed and posted as Deputy Director in the Department of Local Fund Audit and Pensions, Kashmir, till 9th May 2022. He was then transferred and posted as Principal/Joint Director, in the Accountancy Training Institute, Srinagar, upto 18th August 2024. And since 19th August 2024, petitioner is serving as Financial Advisor/CAO in ARI & Trainings Department.

3. It is petitioner's further contention in his petition that while posted at Srinagar Development Authority from 2006-2009, he was given additional charge of Accounts Officer, GMC and Associated Hospitals, Srinagar, in the month of March, 2008, spanning up to five months. However, during the period of 2006-2009, there was some misappropriation/irregularities vis-à-vis Hospital Development Fund in

SMHS. And in terms of letter dated 21st June 2008, Vigilance Organization was requested to conduct in-depth investigation into the financial irregularities, which prima-facie was stated established against Dr. Waseem Qureshi, the then Medical Superintendent by Enquiry Committee constituted by Principal, Government Medical College, Srinagar vide letter dated 1st July 2010 and accordingly FIR no.28/2010, impugned herein, was registered by police station VOK (now ACB) against one Mohammad Amin Nazki, Cashier SMHS Hospital, Srinagar and others, including present petitioner in the capacity of being Accounts Officer.

4. Petitioner also states in his petition that the Government, after registering impugned aforesaid FIR, vide order dated 21st June 2010 placed Mr. Mohammad Amin Nazki, under suspension and attached him with the office of Principal Dental College, Srinagar. In terms of letter dated 29th July 2010, Principal, Government Medical College, Srinagar, was asked to initiate action against officers/officials, who were held responsible for by Enquiry Committee constituted. Embezzlement of HDF to the tune of Rs.1.03 Crore in SMHS Hospital, Srinagar, was incorporated by Principal Accountant General J&K in CAG Report 2011-12. It was, *inter alia*, mentioned therein that failure of DDO (Medical Superintendent) in adhering to monitoring system and internal control as prescribed in Financial Code resulted in misappropriation of revenue of Rs. 1.03 Crore. In the interregnum, for conducting enquiry into the matter, Mr Sajad Ahmad Khan, the then Special Secretary to Government, Health and Medical Education Department, by order dated 14th February 2011, had come to be

appointed as Enquiry Officer. He, vide letter dated 28th December 2011 submitted his report, stating that financial mismanagement, mis-utilization of HDF and violation of prescribed codal procedure occurred in SMHS Hospital during period under reference when Dr. Waseem Qureshi was holding the post of Medical Superintendent at the relevant point of time and was overall Incharge of the hospital and also custodian of HDF and that he was supposed to keep an adequate check over the clerks or accountants/cashier in the office under his control and to remain vigilant and cautious. He was duty bound to check the accounts as frequently as possible in order to see that his subordinate do not commit fraud, misappropriation or any other irregularity. It is also reported by aforesaid Enquiry Officer that due to lax supervision, cashier got ample room to retain government money instead of depositing the same into treasury/bank resulting in an embezzlement of Rs. 103 lacs at the hands of cashier Sh. M.A. Nazki. The said doctor had to ensure that documentation, like the cash/records, were maintained and government money deposited in the treasury/bank regularly by cashier on daily basis. For expenditure in emergencies, he was supposed to do proper documentation and subsequently the expenditure from HDF should have been recouped. The Accounts personnel from the Finance Department posted in the SMHS Hospital at the relevant point of time are also responsible for the occurrence or mis-appropriation and embezzlement of government money to the extent of their negligence in discharging their legitimate duties as they have failed to ensure maintenance of cash book and control over cash/Cashier. It is also reported that to say that a government servant

had been misled or deceived by a subordinate, will in no way mitigate his personal responsibility, since every government servant should be familiar with financial rule laid down by government and exercise strict and close control over his subordinates with regard to the use of public funds and maintenance of proper accounts.

5. It is next submission of petitioner that on enquiry report submitted by Mr. Sajad Ahmad Khan, Special Secretary to Government, Health and Medical Education Department and examined, Principal Government Medical College, Srinagar, issued a letter dated 8th March 2012, advising recovering balance amount of Rs. 48.70 lacs i.e., Rs. 16.45 lacs from Dr. Waseem Qureshi and Rs. 32.25 from Mr. M.A. Nazki, within a period of one week. In pursuance thereof, a chargesheet was served to Dr. Waseem Qureshi, who submitted his written reply to the chargesheet. However, Government in terms of order dated 28th May 2014, appointed Prof. Parvaiz Ahmad Shah, Head of Department, Department of Medicine, Government Medical College, Srinagar, as Enquiry Officer to enquire into the charges framed against Dr. Waseem Qureshi, the then Medical Superintendent, SMHS Hospital, Srinagar. He submitted his enquiry report vide letter dated 11th July 2014, concluding that Dr. Waseem Qureshi, the then Medical Superintendent of SMHS Hospital, had not violated Government rules and instructions related to incurring of expenditure to the tune of Rs. 16.45 lakhs out of HDF and that he had neither misappropriated or embezzled Government fund nor misused his official position. The charges leveled against him were not proved. Dr. Waseem Qureshi had never indulged in dishonesty. He was an upright, honest and dedicated officer whose

sole aim while incurring expenditure of HDF was to save valuable human lives and safeguard government interests. It was recommended that charge of Article 1-6 should be withdrawn and he should be exonerated from all charges as he had followed all rules and instructions / regulations while incurring said expenditure in the interest of patient care. Had he not taken such action that time a number of human lives would have been lost.

6. It is also stated by petitioner in his petition that enquiry report submitted by Prof. Parvaiz Ahmad Shah, Head of Department, Department of Medicine, Government Medical College, Srinagar, was examined by the department and considering findings of the two, one-man enquiry committees, they were found to be contrary and pointing in opposite directions, therefore, Government framed another committee to enquire into charges framed against the then Medical Superintendent, SMHS Hospital, Srinagar. Enquiry committee after conducting enquiry into the matter, submitted its report vide OM no.HME/PS/DF/10/2016 dated 27th April 2016, with unanimous conclusion/ recommendation that Dr. Qureshi was not found responsible for embezzlement. The procurement of medicine/POL from HDF during Amarnath Agitation of 2008 had been confirmed/ratified by Hospital Development Committee (HDC). The rest of outstanding embezzled amount against delinquent cashier, Mr. Mohammad Amin Nazki, was observed to be recovered after complete reconciliation of all the receipts pertaining to the period, by Accounts Officers, Associated Hospital Srinagar. Supervisory lapse of HDF account and HDF cashier needed to be looked into as the then Medical Superintendent during the course of hearing stated that

maintaining HDF accounts was the responsibility of the DDO/Accounts Officer, but the committee observed that the statement of the then Medical Superintendent though plausible was yet not tenable. Pursuant to aforesaid recommendations of enquiry committee, the Government by order no. 508-HME of 2016 dated 16.09.2016, exonerated Dr. Waseem Qureshi, of the charges framed against him.

7. It is further contention of petitioner as urged by him in his petition that after passing of Government order dated 16th September 2016, Principal/ Dean, GMC and Associated Hospitals, Srinagar, addressed a communication dated 31st July 2017 to the Government, stating that letter dated 15th December 2016 was served to Mr. M.A. Nazki, to deposit whole amount in lumpsum to the Treasury, however, cashier in his reply requested that he was not in a position to deposit the amount in lumpsum as meagre amount of 50% subsistence allowance was only source of income to look-after his family. It was also stated by him that in order to make good the loss to the exchequer, the appropriate way to effect the recovery was from his salary, which became due to him. He accordingly, recommended reinstatement of delinquent official so that amount would be recovered from his salary in the matrix given in the communication. Pursuant to recommendations Mr. M. A. Nazki, was not only reinstated in service but was given due promotions from time to time and the entire amount of Rs.32.25 Lacs was recovered from him. Since after issuance of Government order dated 16th September 2016 and communication dated 31st July 2017, impugned FIR was still subsisting, therefore, the then Medical Superintendent challenged the same before this Court in CRMC no.179/2018. The said Petition was

not only entertained by this Court but by order dated 7th May 2018, it directed that till next date before the Bench, prosecution in FIR no.28/2010, impugned herein, was stayed. Meantime, Accounts Officer, SMHS Hospital, Srinagar, addressed a communication dated 1st February 2022 to Principal Accountant General for recovery of outstanding amount of Rs. 32.25 lakh from Mr. M. A. Nazki, Ex-Cashier, SMHS Hospital, Srinagar and adjustment of vouchers/bills to the tune of Rs. 16.45 lakh and dropping of Audit para from Snap Audit Inspection Report thereof. It was mentioned therein that recovery of outstanding/balance amount from aforementioned official was effected from June 2018 to January 2022. Thus, Rs.32.25 Lacs was recovered from said official and remitted to Government Treasury from time to time. The expenditure of Rs.16.45 incurred during Amarnathji Land Row in 2008-09, followed by curfew/strikes and road blockade even National Highway was closed for a long period, on account of procurement of emergency medicine/POL etc. was also regularized by Standing Hospital Development Committee comprising of all Heads of Department and two MLA/ MLCs, besides Pincipal, Government Medical College, Srinagar. Dropping of audit para from Snap Audit Inspection Report was requested. It is being also stated by petitioner that since embezzled amount has been recovered from main accused and remaining part of outstanding amount has been explained and given account for, therefore, respondents have to close enquiry/case. Instead of doing so, respondents filed a fresh status report of case FIR no.28/2010 before this Court in CRMC no.179/2018. In view of said report, which is contrary to position in the matter, petitioner seeks

quashment of impugned FIR to his extent because accused person Mr. M. A. Nazki, Ex-Cashier, has admitted embezzlement of public revenue and has deposited embezzled amount and, therefore, there remains no ambiguity about omission and commission of offences by aforesaid official inasmuch as no involvement directly or indirectly has been found during course of investigation against petitioner.

8. I have heard learned counsel for parties and considered the matter.
9. Mr. M. S. Reshi, learned counsel appearing for petitioner, would contend that in the year 2008, petitioner was holding the post of Accounts Officer in the office of Srinagar Development Authority, he was given an additional duty/charge of the post of Accounts Officer, SMHS Hospital, Srinagar, from March 2008, for just five months only. There had been misappropriations/irregularities happening in Hospital Development Fund in SMHS Hospital. By letter dated 21st June 2008, conducting of in-depth investigation was requested. Various enquiries were conducted. Those enquiries recommended reinstatement of accused and recovery of embezzled amount. Accused Mr. M. A. Nazki was not only reinstated but also promoted and embezzled amount recovered from him. Against petitioner, there is no allegation and/or had any role to play in embezzlement of public revenue, but, however, he has been made to suffer for none of his fault and has been shown as one of the accused by respondents in their status report.
10. According to Mr. Reshi, petitioner cannot be held responsible for the offences never committed by him, particularly when he had been holding additional charge of the post of Accounts Officer during the period commencing from March 2009 to August 2009. Including

petitioner in the list of accused is clear abuse of process of law when he did not indulge in any criminal activity or embezzlement of public revenue. As stated by Mr Reshi stoutly that Section 5(1) (d) of PC Act applies only to a case where a person by corrupt or illegal means or by otherwise abuses his position as public servant obtaining for himself or for any other person any valuable thing or pecuniary advantage whereas in the case of petitioner he has never indulged in such acts or activities.

11. Given contentions of Mr. Reshi, it would be appropriate to first reproduce contents of impugned FIR as follows:

“A Joint Surprise Check was conducted into the allegation of misappropriation of public revenue by Shri Mohd. Amin Nazki, Cashier and other official(s) of SMHS Hospital during the period 01.04.2007 to 16.03.2010. JC has found that the public revenue would come in the office of Medical Superintendent, SMHS Hospital, Srinagar, from the different sources viz. investigation charges, parking charges, rent of the canteen etc. of the hospital through Deputy medical Superintendent/Medical Record Officer and was being handed over to the cashier of the SMHS Hospital for its remittance/deposit under three heads viz. HDF (Hospital Development Fund), 0210 (Govt. Revenue) and 8443 /Revolving Fund Deposit). It was also stated that the revenue collected under head HDF would be deposited in J&K Bank Ltd. B.D. Medical College, Srinagar and the revenue collected under other two heads would be deposited in Govt. Treasury, Tankipora, Srinagar. It was found that Head 0210 was maintained under the control of the Accounts Officer as DDO and for other two heads viz. 8443 and HDF, Medical Superintendent, SMHS Hospital, DDO and that the JSC found that during the period April, 2007 to March, 2010 an amount of Rs. 1,43,89,360/- as revenue realized under different heads from the public was handed over to Shri Mohd. Amin Nazki, Cashier, for its remittance to Govt. Treasury and J&K Bank. However, Shri Mohd. Amin Nazki, Cashier out of the aforesaid amount of Rs. 1,43,89,360/- unauthorizedly and illegally incurred Rs. 63,52,574/- on different components viz. salary, refunds, refreshment charges and that Shri Mohd. Amin Nazki, Cashier, willfully retained remaining amount of Rs. 80,36,846/- and did not deposit it in Govt. Treasury and J&K Bank, for a considerable period with criminal intent to misappropriate it. Shri Mohd. Amin Nazki, Cashier, was also found to have resorted to manipulation of records viz. Cash Books etc. to facilitate the misappropriation of public revenue. It was found that Mohd. Amin Nazki, Cashier, in league with other officials) of SMHS Hospital had misappropriated the public revenue of Rs. 80,36,846/- and that the JSC has found that Mohd. Amin Nazki, Cashier, subsequently after detection of the fraud/misappropriation, out of the

misappropriated amount of Rs. 80,36,846/- deposited Rs. 52,89,113/- in Govt. Treasury leaving behind with him unremitted amount of RS. 27,47,733/- and in this manner the accused public servants(s) Mohd. Amin Nazki, Cashier and others by abuse of their official position and in league with each other, under a conspired plan dishonestly misappropriated public revenue of Rs. 80,36,846/- and thus, the omission and commission on the part of the accused public servants constitute offences under section 5(1)(c), 5(1)(d), Section 5(2) of J&K PC Act readwith Section 120-B, 409,468 and 471 RPC, as such, a case is accordingly registered in P/S VOK and the investigation of the case is entrusted to Inspector Ab. Rashid No. 2745/NGO who shall conduct the investigation of the case under the supervision of SP (ACB).”

12.It would also be beneficial to have an overview of Section 5 of PC Act hereunder:

“5. Criminal misconduct

(1) A public servant is said to commit the offence of Criminal misconduct—

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the State Ranbir Penal Code, Samvat 1989; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceedings or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the persons so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) 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; or

(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation :— For the purposes of this section, “known sources of income” means income received from any lawful source when such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant”.

(1A) Notwithstanding anything contained in sub-section (1), a member of medical or para-medical staff of the Sher-i-Kashmir Institute of Medical Sciences, Srinagar shall be deemed to have committed the offence of criminal misconduct if he resorts to private practice in any

form or manner. The Government shall be competent to notify any other Institutes or College for purposes of this section.

(2) any public servant who commits an offence of criminal misconduct as referred to in clauses (a), (b) and (e) of subsection (1), shall be punishable with imprisonment for a term which shall not be less than 2 years but which may extend to seven years and shall also be liable to fine and if he commits criminal misconduct as referred to in clauses (c) and (d) of sub-section (1) shall be punishable and imprisonment for a term which shall not be less than one year but which may extend to five years and shall also be liable to fine.

(2-A) Whoever abets or aids in the commission of criminal misconduct under sub-section (1-A) or allows his premises or Nursing Home to be used for private practices in contravention of the said sub-section shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend up to rupees ten thousand:

Provided that the Sher-i-Kashmir Institute of Medical Sciences, Srinagar shall publish the names and particulars of its medical and para-medical staff annually in at least two local dailies.

(3) Whoever attempts to commit an offence referred to in clause (c) of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(4) Where a sentence of fine is imposed under the provisions of this Act, the Court in fixing the amount of fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1), the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

(5) The provisions of this section shall be in addition to and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this section, be instituted against him.”

13. Section 5 (1)(a) of PC Act that a public servant is said to have committed offence of criminal misconduct if he been habitually accepting or obtaining or agreeing to accept or attempting to obtain from any person for himself or for any other person, any gratification as a motive or reward such as is mentioned in Section 161 of the J&K State Ranbir Penal Code (RPC. Section (1) (b) provides that a public servant is stated to have committed offence of criminal misconduct if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely

to be concerned in any proceedings or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the persons so concerned.

14. In the present case, commission of offence punishable under Section 5 (1)(c) of PC Act is alleged to have been committed. It provides that a public servant is said to have committed offence of criminal misconduct if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do.

15. Insofar as present petitioner is concerned, it is stated by Mr. Reshi that petitioner is not involved in any criminal misconduct because he has never dishonestly or fraudulently misappropriate or otherwise converted for his own use any property entrusted to him or under his control as a public servant or allowed any other person so to do while discharging his duties as Accounts Officer additionally in SMHS Hospital, more particularly when delinquent cashier was under immediate supervision and nose of the then Medical Superintendent which is also evident from the fact that delinquent cashier accepted his guilt and deposited misappropriate amount. Even delinquent cashier was reinstated and given promotional and service benefits.

16. Section 5(1)(d) of PC Act provides that a public servant is said to have committed offence of criminal 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. Concerning present case vis-à-vis aforesaid provision, it is stated by learned counsel appearing for petitioner that petitioner has never indulged in any act that would be said to abuse his position as public servant for obtaining for himself or for any other person any valuable thing or pecuniary advantage and therefore, petitioner as can even be seen from perusal of impugned FIR, has not indulged in any of the acts of omission and commission as are alleged in impugned FIR.

17.Mr. Reshi also states that even main accused-cashier who indulged in misdemeanour has been reinstated and promoted to next higher post and given all monetary benefits and second main accused, the then Medical Superintendent has also been exonerated by the department, whereas petitioner, as a matter of fact, had neither been associated nor affiliated with any embezzlement in any manner, has been made to suffer till date for none of his faults. He seeks to invite attention of this Court to the fact that there is no allegation against petitioner about having received any benefit or any amount of embezzled public revenue for himself or for any other person and therefore impugned FIR to his extent needs to be quashed. Mr Reshi in support of his submissions has placed reliance on *State of Haryana v. Ch. Bhajan Lal, AIR1992 SC 604*.

18.Learned counsel appearing for petitioner has also invited attention of this Court to the report of Enquiry Officer, viz. Special Secretary to Government, Health and Medical Education Department, in which he had reported that financial mismanagement, misutilization of HDF and violation of prescribed codal procedure had occurred in Hospital during the period when the then Medical Superintendent was posted and was

overall incharge of hospital and also custodian of HDF. The then Medical Superintendent was supposed to keep an adequate check over the clerks and accountants/cashier in the office under his control and to remain vigilant and cautious. The then Medical Superintendent was duty bound to check accounts as frequently as possible in order to see that his subordinate did not commit fraud, misappropriation or any other irregularity and that due to lax supervision, cashier got ample room to retain government money instead of depositing same into treasury/bank resulting in embezzlement of Rs.103 Lacs at the hands of cashier, Mr. M. A. Nazki. Even the said doctor had to ensure that documentation, like cash/records were maintained and government money was deposited in treasury/bank regularly by cashier on daily basis and for emergencies he was supposed to do proper documentation and subsequently expenditure from HDF ought to have been recouped. However, thereafter, HOD, Department of Medicine, GMC, Srinagar, was appointed to enquire into charges framed against the then Medical Superintendent. The second enquiry officer recommended to exonerate the then Medical Superintendent. The second report, on examination, was found contrary to earlier one. Accordingly, a committee was constituted, which upon completion of enquiry submitted its report, mentioning therein that it did not find the then Medical Superintendent responsible for embezzlement and recovery of rest of outstanding embezzled amount was recommended from delinquent cashier, Mr. M. A. Nazki. The committee made a clear-cut observation that allegation made by the then Medical Superintendent against Accounts Officer(s) was not tenable. The report was accepted and the then Medical

Superintendent, SMHS Hospital, Srinagar, was exonerated, but a stern warning was issued against the then Medical Superintendent to remain careful in future during conduct of any assignment and it was also ordered that the then Medical Superintendent should not be posted to any such assignment which required accounting supervision in future. Thus, learned counsel for petitioner urges that petitioner is being unnecessarily dragged in to face impugned FIR.

19. Mr. M. S. Reshi, learned counsel for petitioner, has also stated that embezzled amount was directed to be recovered from delinquent cashier, Mr. M. A Nazki. Recovery was effected. Mr. Reshi, avers that once embezzled amount has been recovered from delinquent official/accused and there having no allegation against petitioner overtly or covertly connecting him with commission of offences alleged in impugned FIR, petitioner is to be given a sigh of relief as he has unnecessarily been tagged in impugned FIR, by excluding and removing his name from impugned FIR particularly when it is evident embezzled amount has been recovered from delinquent-cashier and thereafter he has been reinstated and given promotional/service benefits whereas allegations made in impugned FIR even if taken at their face value and accepted in their entirety do not make out a case against petitioner and that uncontroverted allegations made in impugned FIR and evidence collected during enquiry by the department, do not disclosed commission of any offence and make out a case against petitioner.

20. Mr. Reshi also invites attention of this Court to the report of the Committee constituted by the Government, in which it was

categorically concluded by the Committee that the allegations levelled against petitioner were not tenable. He would also aver that during enquiry / investigation conducted by the Committee constituted by the Government with respect to the charges framed against the then Medical Superintendent, SMHS Hospital, Srinagar, it was found that delinquent official/cashier had indulged in activities and consequently, recovery of embezzled amount was effected from delinquent cashier. Insofar as procurement of essential drugs/POL etc by Hospital Development Committee in 2008-2009 during Amar Nath Land Row has been regularized/ratified by Government SMHS Hospital, Srinagar, as is evident from letter dated 1st February 2022 (Annexure VI to writ petition). There is substance in the submissions made by learned counsel for petitioner.

21. Perusal of letter dated 1st February 2022 reveals that audit scrutiny of the record of Medical Superintendent, SMHS Hospital, Srinagar, was conducted by Snap Audit Inspection of the office of Auditor General and Comptroller, which submitted its Inspection Report/Audit Para published in Auditor General and Comptroller in Chapter-11 Audit of Transactions at 2.3 Embezzlement of Government money "Lax supervision and lack of internal control mechanism resulted in embezzlement of Rs.1.06 Crore in two hospitals by concluding that out of Rs.4.73 Crore, which included Rs.8.36 Lakhs available as on 31st March 2007, realized from April 2007 to December 2009 on account of sale of OPD/IPD tickets, medical facilities/investigation charges, parking charges etc. Rs.70.60 Lakhs had not been accounted for and

unauthorizedly retained by the delinquent Cashier. The non-accountal of huge sums by the delinquent cashier

22. Based on detection of embezzlement by Audit, an enquiry committee was constituted, which while confirming embezzlement raised quantum of embezzlement from Rs.70.60 Lakhs detected by the Audit, to Rs.1.03 Crore. Out of the said amount, Rs.54.10 Lakhs had been recovered, thus, leaving a balance of Rs.48.70 Lakhs unrecovered from delinquent cashier. The delinquent cashier was suspended. Thereafter, recovery of outstanding/balance amount from delinquent cashier was effected. Mr. Reshi, in recapitulation, also invites attention of this Court to concluding paragraphs of communication dated 1st February 2022 (Annexure VI to writ petition), which mentions that expenditure to the tune of Rs. 16.45 Lakhs, incurred during Amarnathji Land Row in 2008-09, followed by series of curfew/strikes and road blockade even National Highway was closed for a long period, on account of procurement of emergency medicine/POL etc., in violation of codal formalities and procedure, was regularized by Standing Hospital Development Committee comprising of all HODs and two MLA/MLCs, besides Principal, GMC, Srinagar, and it was requested that audit para from Snap Audit Inspection Report be dropped.

He then urges that once alleged illegal expenditure incurred by the then Medical Superintendent during 2008-09 has been regularized and concerned doctor/Medical Superintendent, who had incurred said expenditure of Rs.16.45, has been given green signal and exonerated from the said allegation, and consequently dropping all proceedings including criminal proceedings as emanated in pursuance of impugned

FIR, then petitioner cannot be made scapegoat vis-à-vis said expenditure and tagged with impugned FIR and made to face proceedings initiated on the basis of impugned FIR as a Damocles Sword hanging over him forevermore. There is substance in submissions of learned counsel for petitioner.

23. Lastly Mr. M. S. Reshi, learned counsel for petitioner, has produced a copy of judgement dated 4th July 2025 passed by a Coordinate Bench of this Court in CRMC no.179/2018 titled as *Waseem Qureshi v. State of J&K and another*. Perusal whereof reveals that impugned FIR to the extent of said petitioner has been quashed. It has been observed in the judgement that may be the said petitioner might have violated departmental norms while incurring expenditure out of Hospital Development Fund, but, nonetheless, only intention of said petitioner in doing so was to take care of extreme urgency that had arisen on account of peculiar circumstances which had prevailed during Amarnath Land row and that action of said petitioner was even ratified by Hospital Development Committee. It has also been observed in the judgement that mere lack of supervision on the part of said petitioner cannot form a basis for roping him in conspiracy. It may be, in the backdrop of supra discussion, added here that once head of the office/ department, viz. the then Medical Superintendent, has been exonerated of all the allegations of incurring expenditure without following codal procedures on the ground of his lack of supervision, then the same allegations cannot be made basis to keep petitioner in lurch and face what he has not done. That apart, it has correctly been stated by learned counsel for petitioner once procurements made by the then Medical

Superintendent have been ratified, then present petitioner cannot remain stuck in limbo for none of their faults and the person involved in its procurement enjoys exoneration as also promotions and service benefits. Learned counsel is also correct to say that that embezzlement of the amount by delinquent cashier working under the nose of the then Medical Superintendent has been accepted by the delinquent cashier and embezzled amount has been recovered and voluntarily deposited by delinquent cashier and thereafter the said delinquent cashier has been given all service benefits including promotional avenues, then present petitioner cannot be punished for what he has never done or committed.

24. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is enquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of delinquent officer also lies in a prompt conclusion of disciplinary proceedings. If he is not guilty of charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. In the present case, the accused cashier has admitted his guilt while depositing the embezzled amount. After depositing embezzled amount, delinquent cashier has been reinstated and given promotion and service benefits as well. Then in such situation, when

there is no evidence against present petitioner, he cannot be left in lurch for years together.

25. Learned counsel for petitioner is also correct in enouncing that keeping proceedings alive against peripheral parties after exonerating main accused has perpetuated unnecessary litigations, harmed reputations and undermined the principles of natural justice and administrative efficiency inasmuch as fairness requires closure of proceedings where main foundation of the case fails. According to him, if main accused, viz. delinquent cashier, is enjoying service and promotional benefits, it is not fair to continue proceedings emanating from impugned FIR against other persons, which includes present petitioner, who is not even having an iota of involvement therein muchless core delinquency.

26. In CRMC no.179/2018, it has been observed that there may be procedure infraction on the part of the petitioner therein while taking action of incurring expenditure out of Hospital Development Fund but that, by itself, cannot be a ground to subject him to criminal prosecution. Reference in this regard was made to *C. K. Jaffer Sharief v. State*, (2013) 1 SCC 205. Then it has been observed by the Coordinate Bench in CRMC no.179/2018 that prosecution record reveals that petitioner may have violated departmental norms while incurring expenditure out of Hospital Development Fund, but nonetheless, the only intention of the said petitioner in doing so was to take care of extreme urgency that had arisen on account of peculiar circumstances which had prevailed pursuant to Amarnath Land row and that action of the said petitioner was ratified by Hospital Development Committee. In such situation, once a person whose action has been

ratified and regularized, then peripheral parties, like petitioner, cannot be dragged to face impugned FIR. Based on that situation and reasoning, the present petitioner has been able to make out a case that impugned FIR and proceedings emanating from it are causing harassment to him, making him entitled to what he has sought for in the instant petition and indulgence sought has become necessary.

27. In the above backdrop, it would be appropriate to say that provisions of Section 528 of Bharatiya Nagarik Suraksha Sanhita, which are *pari materia* to Section 482 of Cr.P.C. provide for inherent powers to the High Court, which is noticed as under :

“482. Saving of inherent powers of High Court. —

Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

28. Exercise of powers under Section 482 Cr.P.C., thus, envisages three circumstances in which inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice.

29. It is well settled that inherent jurisdiction under Section 482 Cr.P.C. is designed to achieve a salutary purpose and that criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of the inherent powers such proceedings can be quashed.

30. In *State of Haryana and others v. Bhajan Lal and others* 1992 Supp

(1) SCC 335, the Supreme Court considered the scope of inherent powers of the Court and after referring to earlier decisions, the Supreme Court enumerated the following categories of cases by way of illustration where the extraordinary jurisdiction under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by the High Court to prevent abuse of process of Court or otherwise to secure ends of justice:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

31. Learned counsel for petitioner is right to urge that allegations made in impugned FIR and even proceedings initiated thereon, even when taken at their face value and accepted in their entirety do not show or constitute any offence or make out a case against petitioner. Even allegations made in impugned FIR and evidence collected thereafter have uncontrovertedly disclosed commission of offence having been committed by delinquent cashier and accepted and admitted by delinquent cashier by depositing embezzled amount. It is also his contention that allegations made in impugned FIR and proceedings initiated thereon do not connect petitioner with commission of offences alleged therein and, therefore, impugned FIR is liable to be quashed. The case in hand as projected by petitioner does fall under categories 1, 3 and 5 of Bhajan Lal (supra). Resultantly, impugned FIR is liable to be quashed by invoking inherent powers under Section 528 of BNSS.

32. A three-Judge Bench of the Supreme Court in *State of Karnataka v. M. Devenderappa and another*, 2002 (3) SCC 89, had an occasion to consider the ambit of Section 482 Cr.P.C. By analysing the scope of Section 482 Cr.P.C., the Apex Court has laid down that the authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It has further held that the Court would be justified to quash any proceeding if it finds that the initiation/ continuance thereof amounts to the abuse of the process of the Court or quashing of these

proceedings would otherwise serve the ends of justice. Following was laid down in paragraph 06:

“6.....All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

33. It would also be worthwhile to reproduce paragraph 8 infra:

“8.....Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* (AIR 1992 SC 604).”

34. The Supreme Court in another case titled as *Priya Vrat Singh and others*

v. Shyam Ji Sahai reported in *2008 (8) SCC 232*, relied on Category 07

as laid down in the case of *Bhajan Lal* (supra). In the said case the Allahabad High Court had dismissed petition filed under Section 482 Cr.P.C. After noticing background facts and parameters for exercise of powers under Section 482 Cr. P.C., the Supreme Court has held that Section 482 Cr. P.C. does not confer any new power on the High Court as it only saves the inherent power which the Court possessed before enactment of the Code. It envisages three circumstances under which inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It has also been said that it is neither possible nor desirable to lay down any inflexible rule to govern exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The High Courts, therefore, have inherent powers apart from express provisions of law necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine, which finds expression in the section, which merely recognises and preserves inherent powers of High Courts. All courts, whether civil or criminal, possess, in absence of any express provision, as inherent in their constitution, all such powers as are necessary to do right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under Section 482 Cr.P.C., the Court does not function as a court of appeal or revision. Inherent jurisdiction under Section 482 Cr.P.C. though wide has to be exercised

sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of the justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation / continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

35. In *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others* (1998) 5 SCC 749, while relying upon judgment in *Bhajan Lal* (supra) it was held by the Supreme Court that the power under Section 482 Cr.P.C. could be exercised by the High Court either to prevent abuse of process of Court or to secure ends of justice. It was observed that the powers conferred on the High Court under Article 226 and 227 of the Constitution of India and under Section 482 of the Cr.P.C. have no limits. It was held as under:-

“22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case

but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.”

36. In *Kapil Agrawal v. Sanjay Sharma*, (2021) 5 SCC 524 it has also been held by the Supreme Court that when the FIR is an abuse of process of law the same can be quashed in exercise of powers under Article 226 of the Constitution of India or under Section 482 Cr.P.C.. Inherent jurisdiction under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India is designed to achieve salutary purpose that criminal proceeding ought not to be permitted to degenerate into weapon of harassment. It was held as under:-

“18. However, at the same time, if it is found that the subsequent FIR is an abuse of process of law and/or the same has been lodged only to harass the accused, the same can be quashed in exercise of powers under Article 226 of the Constitution or in exercise of powers under Section 482 CrPC. In that case, the complaint case will proceed further in accordance with the provisions of the CrPC. 18.1. As observed and held by this Court in a catena of decisions, inherent jurisdiction under Section 482 CrPC and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of inherent powers, such proceedings can be quashed. 18.2. As held by this Court in *Parbatbhai Aahir v. State of Gujarat* [*Parbatbhai Aahir v. State of Gujarat*, (2017) 9 SCC 641 : (2018) 1 SCC (Cri) 1] , Section 482 CrPC is prefaced with an overriding

provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution.”

37. Thus, the consisting view of the Supreme Court has been that for the purpose of preventing abuse of process of law and to secure ends of justice, inherent power can be exercised by High Court under Section 482 of the Cr.P.C. so that criminal proceedings are not permitted to degenerate into weapon of harassment. It has nowhere been laid down that it is only the power under Article 226 of the Constitution of India which should be exercised or only under Section 482 of the Cr.P.C. The same has been in effect held to be concurrent jurisdiction of the High Court since powers under both of them are similar in nature and are in fact akin to each other.

38. For the reasons stated above, instant petition is allowed and FIR no.28/2010 of police station Vigilance Organization Kashmir, registered under Sections 5(1)(c), 5(1)(d), 5(2) of J&K Prevention of Corruption Act read with Section 120-B, 409, 468 and 471 RPC, qua petitioner, is quashed.

39. Disposed of.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

30.07.2025

“Imtiyaz”