

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

Case No. :- Crl R No. 11/2023

Reserved on: 16.10.2025

Pronounced on: 10.11.2025

Uploaded on: 10.11.2025

*Whether the operative part
or full judgment is pronounced?*

Union Territory of J&K through SHO
P/S ACB.

.... **Petitioner(s)**

Through:- Mr. Mohsin S. Qadri, Sr. AAG with
Ms. Maha Majid, Assisting Counsel

v.

1. Ishfaq Ahmad Zargar the then Xen R&B
Division Baramulla S/o Mohammad Yousuf R/o
Gogjibagh, Srinagar (Retired).

....**Respondent(s)**

2. Muneer Ahmad Sherwani, the then AEE, R&B
Division, Baramulla S/o Gh. Mohammad R/o Kanil
Bagh, Baramulla.

3. Khursheed Ahmad Hakeem, the then JE,
R&B, Division Baramulla S/o Khazir Mohammad
R/o HMT, Srinagar.

4. Mohammad Ashraf Dar, the then JE, R&B,
Division Baramulla S/o Habib Ullah R/o Dooru,
Sopore.

5. Zahoor Hussain Bukhari, the then H.D, R&B
Division Baramulla S/o Syed Qamardin R/o Keeri,
Baramulla.

6. Farooq Ahmad Bhat, then Contractor S/o Gh.
Nabi Bhat R/o Sharkwara, Baramulla (**Deceased**).

7. Reyaz Ashraf Banday, Proprietor M/s
Kashmir Friends construction (then Contractor) S/o
Mohammad Ashraf Banday R/o Sheerwani Colony,
Baramulla.

8. Javid Abdullah Bhat (then Contractor) S/o
Mohammad Abdullah Bhat R/o Kanil Bagh,
Baramulla.

Through:- Mr. Altaf Haqani, Sr. Advocate with

Ms. Munneba, Advocate for R-1 to 5.
None for R-6.
Mr. Ibrahim Mehraj, Adv. for R-7
Mr. Tariq M. Shah, Adv. for R-8.

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. Through the medium of instant revision, petitioner herein is seeking setting aside of order dated 02.07.2022 (for short, “the impugned order”) passed by the Court of Special Judge (ACB Baramulla, Banidpora, and Kupwara) (for short, “the trial court”) passed in case titled as “*State through P/S VOK (now ACB) v. Ishfaq Ahmad Zargar and others*”.
2. According to the petitioner herein, FIR No. 21 of 2012 dated 21.08.2012 came to be registered by the then SHO, Police Station, Vigilance Organization Kashmir (now ACB-Kashmir) on the basis of a verification conducted in the allegation that one Sh. Muneer Ahmad Sherwani, the then AEE, R & B Division, Sub Division NHW, Baramulla, (respondent No. 2 herein) during the years 2007-08 and 2008-09, misappropriated Government funds in the construction of two roads under NABARD Scheme being “**Vizer-Thindum-Kreeri-Tilgam Road**” and “**Saloosa-Shrakwara Road**” having been allotted by him to the blue eyed contractors without undertaking a tendering process and during the course of investigation in the said FIR, it got revealed that 19 work components except one work component in question had been allotted to the contractors on approval basis without inviting tenders, inasmuch as, complying with codal formalities, at the cost of Rs. 82.38 lacs as against the sanctioned amount of Rs. 71.41 lacs and that out of the said 18 work components, 05 work components only had been approved by the then

Superintending Engineer on the recommendation of one Ishfaq Ahmad Zagar, Xen, respondent No. 1 herein and 12 work components had been approved by said Xen himself, whereas one work component had been approved by one Wali Mohammad Dar, the then Xen and that said Ishfaq Ahmad Zagar, Xen, had passed bills in respect of ten work components, whereas said Wali Mohammad Dar, Xen had passed bills in respect of 09 work components and that a payment of Rs.598.91 lacs had been made to the contractors and, therefore, in the process a loss to the tune of Rs.5,61,378/- calculated on the basis of engineering reports drawn vide No. 102/Engg./JSC/VOK dated 23.03.2010 and No. 271-Engg-Veri-VOK dated 19.12.2011 of the engineering experts of VOK was found to have been caused to the public exchequer and that since in the said reports, the details of the said calculated losses had not been recorded, a joint spot inspection of all 19 executed works was got conducted and initially in the joint inspection of 08 works revealed that no loss to the exchequer had been caused, however, after inspection of the remaining works the Executive Engineer of VOK vide reports NO. 671-Engg-FIR-VOK, dated 16.12.2014 and 31-31-Engg-FIR-VOK dated 30.01.2018 reported that 12 works were inspected and a loss to the tune of Rs.4,14,916/- in respect of all the executed works instead of Rs.5,61,378/- was calculated and that the FSL, report of the documents seized during the course of investigation including the vouchers bearing questioned signatures and admitted signatures of the accused persons were obtained, in terms whereof, it got established that said signatures had been made by the accused persons and that during the course of investigation the statements of witnesses acquainted with the facts of the case were also recorded under section 161

Cr.P.C. and the accused persons were given opportunity to explain their conduct and upon completion of the investigation and on the basis of both oral and documentary evidence collected, offences covered in the FIR were found to have been committed by the accused persons-respondents herein and consequently charge sheet came to be filed against accused persons/respondents herein.

3. The trial court at the stage of framing of charge and discharge, in the charge sheet supra filed before it by the prosecution-petitioner herein after hearing the appearing counsel for the prosecution as also accused-respondents herein in terms of impugned order discharged all the accused persons/respondents herein except accused No. 6 who had died during the pendency of the case.

4. The prosecution/petitioner herein has called in question the impugned order on the following grounds:

“(a) That the impugned order passed by the Hon'ble Trial court are not based on facts, law and evidence. The Hon'ble Trial court has not appreciated the facts as well as evidence on record. As such, the orders impugned are liable to be set aside.

(b) That, the order passed by the Hon'ble Court are not legally sustainable being improper and against the basic provisions of law governing the investigation of a criminal case which normally cannot be interfered with till its logical conclusion.

(C) That, the trial court has erred in law while holding the accused department justified in paying Rs 822/cum instead of Rs 761.71/cum [para 16 of the judgment] when 822 or 761.71 were not amount of money but area filled with muck i.e volume and was properly shown and explained by the IO. In this regard it is submitted it was properly explained in the charge sheet [para-8] that during investigation it surfaced that instead of paying 761.71 cum the suspect department has paid for 822 cum thus creating a loss of 60.29 cum which at the rate of Rs. 550 works out to be Rs. 33,159.00 as loss on account of less thickness laid. Further exorbitant carriage @ Rs 550/cum was shown against the then reasonable and prevalent rate @ 450/cum therefore making the cumulative loss of Rs. 1,74,543/The Trial Court has erred while taking the area as rates

in showing Rs 822/cum or Rs 761.71/cum which is not the case and is further indicative of non application of mind. The Hon'ble Trial court has further erred in law in justifying exorbitant rates on the ground that over time the rates used to change which cannot be held by Trial Court whimsically without holding any trial. The impugned order needs to be set aside on this count alone.

(d) That, Ld Trial Court has further fell in error while holding that the engineering report submitted in the year 2018 is in conflict with the earlier report with regard to reducing the length from 975 meters to 626 meters while in the last report there is no mention of reducing the length instead 'cum' has been mentioned. In this regard it submitted that in the earlier report it has been submitted in the charge sheet that in the course of verification it surfaced that the estimated length of 975 meters sanctioned has been reduced to a length of 626 meters, thus causing a loss of Rs, 1,80,800/-. The Calculation was made area wise while as in subsequent report calculation has been made on volume wise as thickness has also been taken into consideration. There is as such no deviation in the earlier and subsequent reports. In fact the initial inspection was conducted during verification and the subsequent inspection was conducted during investigation. The impugned order needs to be set aside on this count alone.

(e) That, the Trial court has erred in law in justifying the version of accused [para 16 of the impugned order] that even if rates were paid 80% over and above the SSR-2004 without putting the work tenders as rates varies from area to area and session to session. However, it is respectfully submitted that the justification given by the trial court is erroneous and without any reasonable basis. Such a justification cannot be given by the Hon'ble Court without holding a full-fledged trial. The Trial Court has taken the version of accused on its face value without putting it to the touchstone of court trial as envisaged by Indian Evidence Act. The trial court has also ignored the fact that the work has not been put to tender and has been executed on approval basis as such payment of exorbitant rates raises 4 question mark over the bonafides of the accused. The impugned judgment is bereft of legality and needs to be set aside on this count also. The trial court has acted in the exercise of the jurisdiction illegally and with material irregularity.

(f) The Hon'ble Trial Court has completely ignored the facts as put forth by the investigating agency in the charge sheet] while holding [para 17 of the impugned order] that Wali Mohd. Dar Executive Engineer has not been charge sheeted when out of 19 works the bills for 09 works were passed by him and has been given benefit under section 169 Cr.PC. However, in this regard it is submitted that the investigating agency has given a detailed justification for according the benefit u/s 169 CrPC to the said Xen and to the other persons. It has been stated that two works were got executed by the said Xen which were found in accordance with the procedure and to the satisfaction of the engineering experts of VOK. Further the sanction for launching prosecution against the said Executive Engineer Wali Mohd. was declined by the Govt vide order No. 54-GAD (vig) of 2019

dated 25.10.2019, The Hon'ble Court has also lost sight of the fact that out of 18 work components allotted on approval basis only one work component has been allotted by Xen Wali Mohd. Dar. The Hon'ble Trial Court has raised unwarranted observations against the ACB in this para without holding any trial or without any reason or justification and same needs to be expunged and the impugned order needs to be set aside as such.

(g) The Trial Court has fell in error in holding that no witness to criminal conspiracy, misappropriation or misconduct has been cited as prosecution witness and there is no record from which these allegations can be inferred. The fact of the matter is that the prosecution has produced voluminous record with the charge sheet proving criminal conspiracy, misappropriation and misconduct. The Hon'ble Trial court has completely ignored the record and documentary evidence submitted in support of the case and has thrown away the case of the prosecution without any justifiable reason.

(h) The Hon'ble Court has again not applied its judicial mind to the facts as put forth in the charge sheet in holding that initial complaint was with regard to substandard work in respect of two roads which was stretched to 19 work components and that Superintending Engineer was not made accused despite him giving approval for 05 works. It is respectfully submitted that the reasoning given is not based on fact and is outcome of inferences, guesswork and conjectures. The fact of the matter is that the said two works were divided into 19 components. The Trial Court has further lost sight of the fact that the issue of according approval was not the only issue which was investigated by the agency it was further omission and commission on the basis of which the present accused were arrayed as accused in the instant case. The trial court has thus acted in the exercise of the jurisdiction with material irregularity.

(i) The Hon'ble Trial Court has given a clean chit to the accused No. 7 on the basis of no record and without holding any trial. The reasoning given is based on personal opinion the presiding officer and is not borne out from the records. In fact the accused No. 7 had submitted an application before the trial court for calling some record from District Employment Exchange and District Treasury Office Baramulla which is yet to be allowed. The Hon'ble Trial Court has thus exercised the jurisdiction not vested in it under law. The order impugned needs to be set aside on this count alone.

(j) That the order impugned has resulted in grave miscarriage of justice being patently erroneous, unsound against the facts and circumstances of the case and sheer abuse of the process of law, as such, the impugned order is liable to set aside.

(K) That, the impugned order has been passed by the Ld. Court below on wrong assumption of facts and the law, as such, is liable to be set aside,

(L) That, further legal grounds in support of the case will be taken at the time of arguments albeit with permission of the Hon'ble Court.”

Heard learned counsel for the parties and perused the record.

5. Before proceeding to advert to the case set up by the petitioner herein in the instant revision petition, it would be profitable to refer hereunder to the provisions of Sections 227 and 228 of the Code of Criminal Procedure 1973 (for short “Cr.P.C.”) being germane and relevant to the controversy herein:

“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

A plain reading of the aforesaid provisions would tend to show that object and purpose of sections 227 and 228 Cr.P.C. is to ensure that court should be satisfied that the accusation made against the accused is not frivolous and that there is some material for proceeding against him.

It is settled that at the stage of framing of charge and discharge of an accused, it is to be kept in mind by the court that standard of test proof and judgment which is to applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of framing of charge

or discharge of an accused, because while considering the question of framing of charge the court has the undoubted power to sift the material/evidence for the limited purpose of finding out whether or not a prima facie case against the accused is made out.

A reference in this regard to the judgment of Apex Court passed in case titled as **Kewal Krishan v. Surag Bhan and anr.** reported as **1980 (supp) SCC 499** would be significant wherein it has been inter alia held that provisions of section 227 Cr.P.C. is beneficent to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial and that under Section 227 Cr.P.C., the Court is merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against an accused and that the sufficiency of grounds would take within its fold, the nature of evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him and that the evidence which the prosecution proposes to adduce to prove the guilt of the accused even if fully accepted before the same is challenged in the cross examination or rebutted by the defence evidence, if any, cannot show that accused has committed the offence, then there will be no sufficient ground for proceeding with the trial.

A further reference to the judgment of Apex Court passed in **M.E. Shivalingamurthy v. Central Bureau of Investigation, Bengaluru** reported as **(2020) 2 SCC 768** would also be relevant herein wherein following has been held at paras 17 and 18:

“17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions, viz., *P. Vijayan v. State of Kerala and another* (2010) 2 SCC 398 and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.

17.2. The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under [Section 227](#) of the Cr.PC (See *State of J & K v. Sudershan Chakkar and another*; (1995) 4 SCC 181). The expression, “the record of the case”, used in [Section 227](#) of the Cr.PC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the Police (see *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568).”

6. Keeping in mind the aforesaid position and principles of law and reverting back to the case in hand, it is an admitted fact borne out from the record that FIR No. 21/2012 came to be registered by prosecution/petitioner herein on 21.08.2012 in regard to the 19 work components having been allotted and executed in the years 2007-08 and

2008-09 i.e. after the period of more than five years. No explanation in regard to the belated registration of the FIR has been spelt out in the charge sheet filed before the trial court under Section 173 Cr.P.C., more so, when the same was of significant importance, in view of the nature of the works in question as also vulnerability of the same to natural wear and tear over a period of time.

Be that as it may, perusal of the record available on the file, inasmuch as, copy of the charge sheet in particular tends to show that prosecution-petitioner herein has enumerated 19 work components, claimed to have been inspected on multiple time by the Engineering Wing of the Vigilance Organization lastly in the year as per report dated 13.02.2018 and in respect of said work components figuring at Serial Nos. 9, 10, 12, 14, 15, 16, 17 and 18, no loss to the public exchequer has been found caused to the public exchequer, despite the fact that said works have had been executed in Kacha in and around agriculture land in the year 2007-08 and 2008-09 and inspected between the years 2010-11 and 2018. Record also reveals that besides, out of the said 19 work components, 04 work components figuring at Serial Nos. 5, 6, 11 and 13 have been reported in the said reports as “non verifiable” for obvious reasons as the said works indisputably have had been executed on Kacha soil without any concrete and had remained exposed to ordinary wear and tear over a period of time. It also emanates from the record that four work components figuring at Serial Nos. 2, 3, 4 and 7 in the aforesaid reports have been reported to be existing on spot and tallying with the bills and work component figuring at Serial No. 1 relating to the laying of foundation stone by MLA Sangrama on 25.04.2007 had been found to be

involving a small amount of Rs.31,754/-. Thus, what emanates therefrom the above is that the aforesaid works in question did not involve commission of any offences much less one in the nature of misuse of official position by respondent-officers by acting with illegal or corrupt means or else having caused loss to the public exchequer.

7. Perusal of the record, however, tends to show that loss to the public exchequer has been caused in so far as work components 8 and 19 are concerned. However, it gets revealed from the record that said works stand critically challenge by the Enquiry Officer of the rank of Superintending Engineer (R&B) Circle Baramulla and Kupwara appointed by the Government vide Government Order No. 313-PW (R&B) of 2021 dated 21.10.2021 in this behalf, wherein the said report of the said enquiry dated 04.12.2022, with regard to the said works component 8, at serial No. 2 of the said enquiry report, it has been concluded that upgradation of “Saloosa Shrakwara road” by way of providing and laying Nallah Muck filling to KM-2nd contract of Rs. 4.52 lacs stands an approved work, so also, the work component 19 detailed out at Serial No. 3 of the said enquiry report pertaining to the construction of Saloosa Shrakwara Road/BWO earth work cutting laying of pipes etc. while also envisaging that rate analysis of VOK is not based on general facts and real parameters and has found that rates fixed by the then Superintending Engineer *qua* the said works in fact is on lower side while having given a detailed rate analysis, thus, ruling out the allegation of exorbitant rates or loss in the execution of the works in question to the state exchequer. Here a reference to the judgment of Apex Court passed in titled as **Ashoo Surendranath Tewari v. Deputy Superintendent of**

Police, EOW, CBI and another reported as (2020) 9 SCC 636, would be relevant wherein it has been, *inter alia*, held that the criminal prosecution on same set of facts and circumstances can not be allowed to continue where the allegations have been found to be not sustainable by an enquiry committee on the underlying principle of higher standard of proof in criminal cases, in that, even though standard of proof in departmental proceedings is based on preponderance of probability and is lower than the standard of proof in criminal proceedings where a case has to be proved beyond reasonable doubt.

8. In so far as allegation of execution of work in question without authorization by the accused/respondents officers in the charge sheet is concerned, in terms of the financial power providing in the Financial Code under Entry 36, the power to accord sanction without tender *qua* a work by the Executive Engineer is upto five lacs and the works in question indisputably do not fall beyond the said limit of Rs. 5.00 lacs thus falling within the powers of respondent-officers.

9. In so far as offence of criminal conspiracy alleged to have been hatched by respondent-officers with the contractors/respondents 6 to 8 are concerned, it is significant to mention here that for attracting an offence of criminal conspiracy under Section 120-B RPC, an agreement between two or more persons to commit an illegal act and knowledge of criminal intention of two conspirators is *sine qua non*.

A closer examination of the charge sheet, however, tends to show that there is no evidence suggesting that contractor/respondent 6 to 8 herein entered into a prior agreement of common intention with the accused-official respondents herein.

Law is settled that there must have been an agreement between the persons, who are alleged to have conspired and that agreement should be either for doing an illegal act or for doing by illegal means. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of conspiracy. Leveling of an allegation of conspiracy without mentioning as to how, where and which of the conspirators hatched conspiracy and for what purpose or circumstances warranting inference of existence of conspiracy is not enough to constitute an offence of conspiracy, but an FIR should make out a prima facie case of conspiracy against accused persons as one cannot have the construction of fine superstructure without a foundation.

10. It is very pertinent to note here that the record available on the file suggests that during the course of investigation several officers who have had also been involved at some stage in connection with the works in question have been let off and dropped from the arraignment of the accuseds, thus manifestly suggesting that investigating agency have had failed to collect any credible convincing evidence in the matter either to rope in the said officers or else the respondents herein.

11. A closer examination of the impugned order reveals that trial court has been not only alive to the aforesaid facts and circumstances of the case, but also to the position and principles of law laid down from time to time by the Apex Court in the matter of framing of charge and discharge and seemingly has passed a well reasoned order without committing any fault, illegality or impropriety.

12. Besides, it is also pertinent to mention here that the proceeding in revision is not considered to be in continuation of trial pending before the

trial court and is not a remedy inherent or embedded in any manner in the original proceedings instituted before the trial court, but the power admittedly is purely discretionary and is to be exercised in rare cases in order to ascertain and satisfy as to the correctness, legality or propriety of an order and it is consistent view of the courts that an order of discharge of an accused should not be interfered with unless it is perverse or on the face of the record, is incorrect, perfunctory or glaringly unreasonable, inasmuch as, is passed without reasons or is devoid of any reasons. Further, the power has not to be exercised in order to embark upon the re-appreciation of evidence for coming to a different finding which has been arrived at by the court below.

13. Viewed, thus, for what has been observed, considered and analyzed herein-above, the impugned order does not call for any interference.

14. Resultantly, petition *fails* and is accordingly dismissed.

(JAVED IQBAL WANI)
JUDGE

JAMMU
10.11.2025
Paramjeet

Whether the judgment is speaking: Yes/No
Whether the judgment is reportable: Yes/No