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

CRM(M) No.308/2024 c/w
CRM(M) No.74/2022
CRM(M) No.251/2022
Crl R No. 36/2023
Crl R No. 37/2023
Crl R No. 38/2023
Crl R No. 39/2023
CRM(M) No.427/2023
CRM(M) No.650/2023
CRM(M) No.235/2024
CRM(M) No.328/2024

Reserved on 04.12.2025.
Pronounced on 30.01.2026
Uploaded on: 30.01.2026
Whether the operative part or full judgment is pronounced:
**Full**

HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
सत्यमेव जयते

Mushtaq Ahmad Bakshi and another ..... Petitioners
Mohammad Hussain Mir and others
Iftikhar Ul Hassnain Bari and another
Sheikh Ejaz Iqbal
Sheikh Mehboob Iqbal
Mushtaq Ahmed Malik
Mohammad Akram Khan
Bashrat Ahmad Dhar
Altaf Hussain Khan and others
Mohammad Showkat Chowdhary
Basharat Ahmad Dhar

Through :- Mr. Z.A Shah Sr. Advocate with
Mr. Hanan Advocate
Mr. Jahangir I. Ganai Sr. Adv with
Mr. Owais Advocate
Mr. N.A.Beigh sr. Advocate with
Mr. Murshid Advocate
Mr. Sheikh Faraz Advocate
Mr. J.H.Reshi Advocate
Mr. Z.A.Qureshi Sr. Advocate with
Ms. Rehana Fayaz Advocate.

**V/s**

Central Bureau of Investigation .....Respondent(s)
UT of J&K and another
UT of J&K and another

Central Bureau of Investigation
Central Bureau of Investigation
Central Bureau of Investigation
Central Bureau of Investigation
Central Bureau of Investigation
UT of J&K
Central Bureau of Investigation
Central Bureau of Investigation

Through :- Mr T.M. Shamsi DSGI with
Mr. Faizan Ahmad CGSC.

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

**1.** The afore-titled (11) petitions involve determination of a common question of law, as such, the same are being taken up together for their decision.

**2.** The prosecution against the petitioners/accused in the afore-titled petitions arises out of their alleged acts/omissions relating to the implementation of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Act, 2001 (hereinafter referred to as the "**Roshni Act**"). It is pertinent to mention here that the Roshni Act has been declared unconstitutional and void *ab initio* by virtue of the judgment passed by a Division Bench of this Court in ***Professor S. K. Bhalla v. State of J&K and others*** (PIL No. 19/2011, decided on 09.10.2020). Most of the petitioners have raised the contention that once the Roshni Act, the provisions of which are alleged to have been violated by the petitioners/accused, has been declared void *ab initio*, meaning thereby as if the said legislation had not existed at all, no prosecution

against them can be sustained in law. It has also been contended that, as per the judgment delivered by the Division Bench of this Court in ***Prof. S. K. Bhalla's*** case (supra), the beneficiaries upon whom ownership rights have been vested in respect of the State land in terms of the Roshni Act are required to return the said land to the State and, therefore, there is no loss to the State exchequer. In fact, the beneficiaries, pursuant to the judgment passed in Prof. S.K. Bhalla's case (supra), have been asked to return the land vested in them by virtue of the Roshni Act and the amount of money deposited by them with the State exchequer, being the price fixed by the Committee in terms of the Roshni Act, has not been refunded to them. In these circumstances, it is being contended that the petitioners/accused cannot be prosecuted for having committed the offence of criminal misconduct as defined under Section 5(1)(d) read with Section 5(2) of the J&K Prevention of Corruption Act (hereinafter referred to as the "P.C. Act").

**3.** The contention of the respondent–Investigating Agency (CBI) is that the prosecution against the petitioners/accused has been launched pursuant to the directions passed by the Division Bench of this Court in ***Prof. S. K. Bhalla's*** case (supra) and, therefore, the contention raised by the petitioners/accused is without any substance. It has been contended that even if the Roshni Act has been declared unconstitutional and void *ab initio*, still then, if it is found that the petitioners/accused have, while implementing the scheme under the Roshni Act, acted in a manner which gives rise to the commission of an offence under the P.C. Act, they cannot escape the prosecution, because they are not being

prosecuted for offences defined under the Roshni Act but they are being prosecuted for offences defined under the P.C. Act.

**4.** I have heard learned counsels appearing for the parties and I have also gone through record of the case.

**5.** The issue that is required to be determined, which is common to all these petitions, is as to whether, on account of the fact that the Roshni Act has been declared unconstitutional and void *ab initio*, the prosecution for offences defined under the P.C. Act against the petitioners/accused, who happen to be the public servants and the beneficiaries, can proceed. If the answer to the said question is in the negative, we need not go into the merits of the individual petitions. However, in case it is found that, in spite of the Roshni Act having been declared void *ab initio*, the prosecution against the petitioners/accused can proceed in respect of offences as defined under the P.C. Act, then the individual role of each of the petitioners would have to be scrutinized on its own merits so as to ascertain whether or not any offence is made out against him.

**6.** The Roshni Act was promulgated in November 2001. As per the scheme enacted under the said legislation, proprietary rights were to be given to persons holding State land un-authorizedly on payment of cost equivalent to the prevailing market rate, for the purpose of generating funds to finance power projects in the State. Initially, the proprietary rights were to be given to persons holding State land un-authorizedly till the year 1990, but later on amendments were made to the Roshni Act in the years 2004 and 2007. By virtue of the Amendment Act of 2004, all occupants, who were in actual physical possession of the State land in

the year 2004, were held to be eligible. Section 2 of the Roshni Act provided for definition of 'authorized occupants', 'authorized overstayed occupant', 'occupant' and 'unauthorized expectant occupant', thereby creating four categories of occupants. Section 2 of the Act also defined State land, whereas Section 4 of the Act provided the procedure for vesting or transfer of the State land. As per the said provision, the price of the land was to be determined by a Committee, and the applications for vesting or transfer of State land were also to be considered by the said Committee for their disposal. Section 7 of the Act provided for an appeal against an order of the Committee relating to the price for vesting of freehold rights in favour of an occupant. Section 12 of the Act provided for constitution of a Committee for determination of price of the land, whereas Section 15 of the Act provided indemnity to the officers and authorities in respect of anything done in good faith purported under the Act and Rules made thereunder.

**7.** In exercise of powers under Section 18 of the Roshni Act, the Government framed Rules in the year 2007. The said Rules provided for methodology for determination of market value. It also provided for the constitution of the Committees that were vested with the power to consider the applications for vesting of State land. The Rules also provided for an appeal against an order of a Committee within a period of (30) days, whereas the power of review was also vested in the officers exercising powers under the Roshni Act and the Rules framed thereunder.

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**8.** The Division Bench of this Court, in the case of **Professor S.K. Bhalla** (supra), after noticing all the aforesaid provisions contained in the Act and the Rules framed thereunder, found that various illegalities had been committed while considering the applications of various occupants. The Division Bench also took note of the report of the Comptroller and Auditor General of India for the period ending March 2013 and also the report for the year 2014 to highlight the illegalities committed in implementation of the Roshni Act. Instances such as vesting of proprietary rights in respect of land belonging to certain private persons in favour of the daughters of a sitting Cabinet Minister were highlighted by the Division Bench in its judgment. The instance relating to encroachment of 784 kanals and 17 marlas of land in village Gole, which was transferred to the Jammu Development Authority, was also taken note of by the Division Bench. Besides this, the Division Bench highlighted the instance relating to encroachment of 154 kanals of land belonging to the JDA. Reference was also made to non-compliance of the directions of the Court by the JDA with regard to demarcation of 66,436 kanals of land.

**9.** After noticing the aforesaid instances, the Division Bench highlighted the inaction of the Anti-Corruption Bureau in investigating the cases which were registered by it. Reference was made to the case registered under FIR No. 16/2014 by the Vigilance Organization, in which closure report was laid before the Court, but the said report was not accepted by the Court. It was also noticed by the Division Bench that in FIR No. 19/2014 registered by the Vigilance Organization Kashmir (VOK), there

are allegations with regard to misuse of position by the officials of the Revenue Department in conferring land rights over 40 kanals and 1½ marlas of land in District Budgam. The Division Bench observed that the facts had been dishonestly concealed by the VOK while investigating FIR No. 19/2014. The Division Bench made the observation that there is prima facie culpability of Government officials at the highest level, which has enabled encroachment of public lands and permitted their illegal vesting in the hands of private owners, as such, the same needs to be investigated.

**10.** The Division Bench recorded its conclusions in the following manner:

> "i. The Jammu and Kashmir State Land (Vesting of Ownership to the Occupants) Act, 2001 as amended from time to time is completely unconstitutional, contrary to law and unsustainable. The legislation adversely impacts rights guaranteed to the people under Article 14 & 21 of the Constitution of India, was void ab initio from its very inception and there in could be no legal divesting of the lands from the ownership of the State and vesting the same with the occupants thereunder. As a result, the statement in Section 4 of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Repeal and Savings) Act, 2018, that the Act does not effect anything already done under the Roshni Act is meaningless and of no assistance to the beneficiaries. All acts done under the Act of 2001 or amendments thereunder are unconstitutional and void ab initio. Section 6 of the General Clauses Act, 1897, would also not aid the beneficiaries therefore.
>
> ii. The Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) Rules, 2007 are not in consonance with the statutory provisions. For instance, amongst others, Rule13(IV) permits vesting of agricultural land free of cost; Rule 16 provides for rewards, rebates and incentives; Clause (a) to the fifth proviso in Rule 13 enables change of use of even agricultural and forest lands to commercial usage all of which are contrary to the statutory provisions, completely impermissible and illegal. As such these Rules are ultra vires the parent enactment.

iii. The Roshni Rules of 2007 apparently stand published without the approval of the legislature and clearly could not have been implemented. All orders passed and action taken premised on the Rules of 2007 are therefore completely illegal and void ab-initio.

iv. The acts and omissions of officials and the encroachers/ occupants tantamount to serious criminal offences, necessitating inquiry, investigation and criminal prosecutions.

v. The working of the Roshni Act, 2001, was effected completely arbitrarily, dishonestly and illegally. There exist glaring instances of State lands being illegally vested by under valuation of the land. In a large number of cases, the State lands stand vested without payment of any amount which is completely illegal and void. Instances of vesting of prohibited encroachments (for instance, those on forest lands or of lands reflected as State lands in the revenue records) abound.

vi. The large tracts of State lands vested under the Roshni Act, 2001 and those under encroachment must be retrieved in accordance with law.

vii. The above extract of court proceedings shows the contumacious, dishonest and penal acts of the respondents manifested from the reluctance to place the records before this Court and the Vigilance authorities; the absolute refusal to retrieve encroached State lands, take action against the encroachers or to effect the demarcations despite repeated Court orders since 2011.

viii. The official machinery has actively connived with encroachers of State lands for obvious reasons and considerations. There is substance in the assertions of the petitioner and the applicants that persons in position, power and those with financial resources including bureaucrats, Government officials, minister, legislators, police personnel, business persons etc., have influenced in the completely illegal vesting of State lands. Clearly the conduct of those heading the Jammu Development Authority, the Revenue department and all those responsible for the protection of the State lands as well as the working of the Roshni Act for all these years deserves to be inquired/ investigated into. Responsibility has to be fixed and the wrong doers punished. ix. Not only have encroachments been permitted but the encroachers have been given sanction of building plans and permissions for commercial use thereof. This ipso facto establishes the complicity

of the Municipal Corporations and licencing authorities with the encroachers.

x. The manner in which the official respondents have proceeded with regard to serious matter of encroachments of the State lands; its illegal vesting to the encroachers; permissions to raise construction; grant of licences thereon and such lands put to commercial usage, requires immediate inquiry and determination of culpability of those involved in, as well as, of those who have permitted such transactions. Appropriate criminal action in accordance with law for the same is required to be undertaken against those found culpable.

xi. The erstwhile Vigilance Organization has merely undertaken a cosmetic exercise which too points towards shielding persons in authority as well as those responsible for the illegalities. The magnitude of the scam, the closure Report dated April, 2019 filed by the ACB and the GAD on 9th September 2020 clearly show that neither the Anti Corruption Bureau nor the official in respondents have the capacity, ability or the will to take appropriate legal action for securing the interests of the State or taking effective actions against those who have usurped the public land with impunity in the erstwhile State of Jammu and Kashmir or retrieving the lands from those who continue to illegally occupy the State lands in the Union Territory of Jammu & Kashmir.

xii. The apprehensions of the petitioner in PIL No.19/2011 and the applicant in CM No. 48/2014 that a cover up of the encroachments and illegal vestings by public officials and authorities is underway, are well founded and no honest enquiry or investigation by the local agencies is possible.

xiii. The required enquiry deserves to be scientifically proceeded with and closely monitored.

xiv. By illegal working of the Government functionaries, out of the actual transfer of around 3,48,200 kanals of land under the Roshni Act, the major portion of over 3,40,100 kanals has been transferred free of cost as agricultural land. xv. The three instances placed before us by the petitioner narrated as Serial Nos. A, B, C are only noted as illustrations. An in depth inquiry of all transfers effected by the working of the Roshni Act, 2001(and amendments thereto), Roshni Rules, 2007 and continuing encroachments of the public lands is absolutely imperative in public interest.

xvi. The damage by the illegal acts and omissions in the present case cannot be termed as mere loss to public interest but has to be treated as a shameless, sacrilege and damage to national interest. The guilty need to be forthwith identified and proceeded against in accordance with law.

xvii. The present case, therefore, is a fit case for enquiry by the Central Bureau of Investigation which is required to go into all aspects of the matter".

**11.** After recording the aforesaid conclusions, the following directions were issued by the Division Bench:

".(I) The Commissioner/ Secretary to Government Revenue Department, shall ensure that following information regarding district wise State lands as on 1st January, 2001, are compiled and posted on the official website as well as the NIC website:

(i) The details of the State land which was in illegal and unauthorized occupation of person(s)/ entities with full identity of encroachers and particulars of the land.

(ii) The details of:

(a) the applications received under the Roshni Act, 2001;

(b) the valuation of the land;

(c) the amounts paid by the beneficiary;

(d) the orders passed under the Roshni Act; and

(e) the persons in whose favour the vesting was done and also further transfers, if any, recognized and accepted by the authorities.

(iii) Complete identities of all influential persons (including ministers, legislators, bureaucrats, government officials, police officers, IA No. 48/2014 & CM Nos. 4036, 4065 of 2020 in businessmen etc.) their relatives or persons holding benami for theim, who have derived benefit under the Roshni Act, 2001/ Roshni Rules 2007 and/or occupy State lands.

(II) The Divisional Commissioners, Jammu as well as Kashmir, shall place on record district-wise full details of the encroached State land not covered by the Roshni Act, Rules, Scheme(s), order(s) which continues to be under illegal occupation; the full identity and particulars of the land and person(s)/entities encroaching the same. The Revenue Secretary shall ensure that

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this information is also posted on the website of the respondents within four weeks.

(III) The Secretary Revenue, Govt. of the Union Territory of Jammu and Kashmir shall furnish the above information with copies of the supporting records to the CBI in the digitized format, and, if requested, hard copies thereof be also provided, within four weeks. The same shall be filed on court record as well.

(IV) Translation of records, wheresoever required, shall be expeditiously ensured by the concerned Deputy Commissioner from the Tehsildars and provided to CBI within one week of the need being noticed/informed.

(V) In case, the above directions are not complied with, the Secretary Revenue and the Divisional Commissioners of Jammu and Kashmir shall be held liable and proceeded against for Contempt of Court.

(VI) The present order be placed before the Director, CBI, who shall appoint teams of officers not below the ranks of Superintendents of Police assisted by other officers to conduct an in depth inquiry in the matters which are the subject matter of IA No. 48/2014 & CM Nos. 4036, 4065 of 2020 in this order. On conclusion of the inquiry, the CBI shall register case(s) in accordance with law against the person(s) found culpable, proceed with the investigation(s) as well as prosecution(s) thereof.

(VII) The Anti Corruption Bureau shall place before the Director, CBI, the closure report in FIR 6/2014 filed on 4th July, 2019 before the Special Judge (Anti-Corruption Judge, Jammu) as well as a copy of the order dated 4th December, 2019 passed thereon by the Special Judge, Jammu.

(VIII) The Anti Corruption Bureau of the Union Territory of J&K shall place complete records of all matters regarding land encroachment/ Roshni Act or Rules being enquired into or cases investigated into by it, before the CBI which shall proceed with the further inquiries and investigations therein in accordance with law.

(IX) In all cases in which charge sheets stand filed by the Anti Corruption Bureau in the Courts, the CBI shall conduct further and thorough investigation, and, if necessary file additional charge sheets in those cases.

(X) In cases pending for accord of sanction for prosecution before the Anti Corruption Bureau or the Competent Authority, the records thereof shall be placed before the CBI for examination. These cases shall be thoroughly further examined investigated by the CBI and the matter for accord of sanction of prosecution

against all persons found by the CBI as involved in the offences, shall be proceeded with

(XI) The CBI shall immediately inquire into the three instances at Serial Nos. A, B, C above (paragraph nos. 54 to 82); the matters pointed out in CMs 4036/2020, CM 4065/2020 and all instances of vesting under the Roshni Act and encroachment of State lands by influential persons as above in the details provided by the authorities and proceed further in these cases in accordance with law.

(XII) The CBI shall also inquire into the continued encroachments on State lands; illegal change of ownership/use; grant of licences on encroached State lands; misuse of the land in violation of the permitted user; raising of illegal constructions; failure of the authorities to take action for these illegalities; fix the responsibility and culpability of the persons who were at the helm of affairs, who were duty bound to and responsible for taking action; their failure to proceed in accordance with law against the illegalities and instead have permitted/ compounded the same, as also any other illegality which is revealed during the course of the enquiry wheresoever.

(XIII) The CBI shall specifically inquire into the matter of publication of the Roshni Rules, 2007 without the assent of the legislature. If this is found true, the CBI shall identify the persons responsible who have illegally and dishonestly published the same and proceed in the matter for their criminal liability.

(XIV) The Principal Secretary, Revenue; Vice Chairman JDA and all other authorities from whom information is required by the CBI shall efficiently and expeditiously furnish all records and information to the CBI. Failure on the part of any Government authority to do so shall render them liable for appropriate departmental action apart from inviting criminal prosecution.

(XV) We grant liberty to the petitioner in PIL No.19/2011 and Ankur Sharma, the petitioner in PIL No.41/2014; the applicants in CM 4036/2020 and CM 4065/2020 to place all material in their power and possession before the Central Bureau of Investigation. If called upon to do so, they shall render full assistance to the CBI.
(XVI) The CBI shall file action taken reports every eight weeks in sealed cover before this court in this case.

(XVII) The Chief Secretary of the Government of the Union Territory of Jammu & Kashmir shall monitor the matter and ensure that the inquiry by CBI is not hampered in any manner on account of concealment of documents, records, requisite assistance or cooperation on the part of the official machinery.

(XVIII) Any effort to delay the enquiry by the CBI in any manner should be construed as active connivance by such person(s) with those whose culpability is being investigated.

(XIX) In view of the above directions, the presence of the applicants in IA Nos. 4036/2020 and 4065/2020 in the present proceedings is completely unnecessary and these applications are disposed of".

**12.** From a perusal of the afore-quoted conclusions and directions issued by the Division Bench in **Professor S.K. Bhalla's** case (supra), it is clear that the Court has ordered investigation and criminal prosecution in respect of acts and omissions of officials and the encroachers/occupants, which, according to the Court, tantamount to serious criminal offences. It has also been concluded that the working of the Roshni Act is required to be investigated and the responsibility has to be fixed and the wrongdoers punished. The Division Bench also concluded that an in-depth inquiry into all transfers effected by virtue of the Roshni Act and continuing encroachments of public lands is absolutely imperative in public interest. After drawing these conclusions, the Division Bench observed that an inquiry by the CBI is required to go into all these aspects. Besides this, a direction has been issued to the CBI to proceed with further inquiries and investigations in accordance with law in respect of all matters which were investigated by the ACB of the UT of Jammu and Kashmir. The directions of the Division Bench are clear and unequivocal in laying down that every transaction undertaken with regard to vesting of State land in favour of the occupants has to be investigated by the CBI. In those cases which have been investigated by the ACB, the CBI has been directed to look into the cases and conduct

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further investigation. In the face of these unequivocal directions, it will not be open to this Court to even go into the issue as to whether the prosecution against the petitioners/accused would or would not sustain in the face of the Roshni Act having been declared as void *ab initio*.

**13.** Apart from the above, it has to be borne in mind that the petitioners have been investigated/prosecuted in respect of offences under the P.C. Act and not in respect of any offence defined under the Roshni Act. Though the provisions of the Roshni Act are no more in existence and, in fact, are deemed to have not been in existence from very inception, yet the provisions of the P.C. Act are certainly in existence. If it is found that the petitioners/accused have conspired to commit an offence of criminal misconduct as defined under Section 5(1)(d) of the P.C. Act, the mere fact that the Roshni Act has been declared unconstitutional would not save their actions. To say that a public servant who has taken bribe or illegal gratification while implementing the Roshni Act would get scot-free because the Roshni Act has been declared unconstitutional would be illogical and preposterous. Even if pursuant to the judgment passed by the Division Bench of this Court in ***Professor S.K. Bhalla's case*** (supra), the beneficiaries/accused are made to surrender the State land vested in them to the State, still then it would not lead to their exoneration from the charges relating to criminal misconduct if, from the material on record, it is found that they had obtained proprietary rights in respect of the said land by conspiring with the public servants who, by misuse of their official position, had conferred benefit upon these beneficiaries/accused in an illegal manner. Once an offence has been

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committed by a person, merely because the benefit derived by the said person has been restituted in favour of the person against whom the said offence has been committed, cannot lead to the obliteration of the offences committed.

**14.** It has been contended by the learned counsels appearing for the petitioners/accused that, as per Article 20(1) of the Constitution of India, a person cannot be convicted of an offence except for violation of a law in force at the time of commission of the act charged as an offence. It is being contended that because the Roshni Act is deemed to be not in existence from its very inception, as such, if at all any violation of the said law has been committed by the petitioners, the same cannot be termed as 'violation of a law in force'. To support this contention, the petitioners have placed reliance upon the judgments of the Supreme Court in ***Nawabkhan Abbaskhan v. State of Gujarat, (1974) 2 SCC 121; CBI v. Dr. R.R. Kishore, 2023 SCC Online SC 1146; and Deep Chand v. State of U.P.,*** **AIR 1959 SC 648.**

**15.** The aforesaid argument raised by the learned counsels appearing for the petitioners is absolutely misconceived for the reason that the petitioners are being prosecuted not for an offence defined under the Roshni Act, which has been declared unconstitutional, but they are being prosecuted for an offence defined under the P.C. Act, which is in existence. Apart from this, even if the petitioners are being prosecuted for having violated the Roshni Act, which has been declared void *ab initio*, still then the fact of the matter remains that at the time of the alleged acts/omissions of the petitioners, the said legislation was in force. If the petitioners have

violated any provision of the said legislation which was the law in force at the relevant time, leading to commission of offence of criminal misconduct as defined under the P.C. Act, certainly the petitioners can be prosecuted for the said offence, and the provisions of Article 20(1) of the Constitution would not get attracted to the case at hand.

**16.** From the above discussion, it is clear that the common question of law which has been raised by the petitioners in these (11) petitions has to be answered by holding that the declaration of the Roshni Act as void *ab initio* by the Division Bench of this Court, in the case of *Professor S.K. Bhalla* (supra), would not render the prosecution against the petitioners unsustainable in law. In this view of the matter, the individual petitions filed by the petitioners are required to be considered on their own merits.

**17.** While analyzing the role of individual petitioners, it has to be borne in mind that the Roshni Act was a valid piece of legislation at the time when the petitioners acted or omitted to act in connection with implementation of the said Act. Howsoever bad the Roshni Act may have been, if, upon analysis of the individual role of the petitioners, it is found that there has been no violation of any law, including the Roshni Act, merely because the petitioners have acted pursuant to the Roshni Act, which has been declared unconstitutional and void *ab initio*, they cannot be subjected to prosecution unless their acts or omissions amount to an offence of criminal misconduct as defined under Section 5(1)(d) of the J&K Prevention of the Corruption Act. In fact, the officers were duty-bound to consider the cases of unauthorised occupants of State land for conferment of ownership rights upon them in terms of the provisions

of the Roshni Act. The said Act and the Rules framed thereunder provided for penalties for inaction and incentives for expeditious implementation of the Scheme. Therefore, the public servants who dealt with the cases under the Roshni Act cannot be prosecuted if their actions were in accordance with the Roshni Act which was in force at the relevant time.

**18.** Before dealing with the rival contentions in individual cases, the legal position with regard to the scope and power of this Court under Section 482 of the CrPC to quash the prosecution has to be borne in mind. In the celebrated judgment of ***State of Haryana v. Ch. Bhajan Lal and others,*** **AIR 1992 SC 604**, which has been consistently followed till date, it has been held that where the uncontroverted allegations made in the FIR and the evidence collected in support of the same do not disclose commission of any offence or make out a case against the accused, the Court must exercise its powers to quash the proceedings with a view to prevent abuse of the process of the Court or otherwise to secure the ends of justice. Thus, it is only if the material collected by the Investigating Agency does not make out a case against the petitioners that this Court would be justified in quashing the impugned proceedings. With this position of law in mind, the material that has been collected by the Investigating Agency during the course of investigation has to be analyzed by this Court in each case.

**19.** In the backdrop of aforesaid position of law, the individual petitions are being taken up for consideration hereunder:

**(I) <u>CRM(M) No. 235/2024:</u>**

**20.** Petitioner Mohd. Showkat Choudhary, through the medium of the present petition, has challenged the charge-sheet arising out of FIR No. RC.1232022A0009, which is stated to be pending before the Court of the learned Special Judge, Anti-Corruption CBI Cases, Srinagar.

**21.** As per case of the prosecution, land measuring 04 kanals under Survey No. 1347 min was leased out to one person in the year 1977, and the said lease was to expire in the year 2020. It is alleged that the aforesaid lessee handed over 8 marlas out of the said 04 kanals of land to the petitioner by virtue of an Irrevocable Power of Attorney dated 06.08.2001.It is further alleged that the petitioner, vide his application dated 24.02.2004, applied for conferment of ownership rights under the Roshni Act and that, on 08.10.2004, the Deputy Commissioner, Srinagar, informed the Divisional Commissioner, Kashmir that the case could not be considered because the land in question was situated within the vicinity of an important road. It is alleged that on 11.07.2007, another Price Fixation Committee, constituted under the Chairmanship of the then Divisional Commissioner, considered the application of the petitioner under the category of unauthorized occupant and determined the price of the land as Rs. 14,40,000/-, i.e., 60% of the adopted rate, for the land measuring 08 marlas. Accordingly, the petitioner was conferred ownership rights in respect of the said land.

**22.** As per the chargesheet, after investigation, it was found that the land in question was leased out to Dr. Mehboob Afzal Beigh and that proprietary rights in respect thereof were conferred upon the petitioner.

According to the Investigating Agency, the land in question was never in possession of the petitioner and, as per the allotment order, he has been conferred proprietary rights in respect of land under Khasra No. 1364, but, on the basis of the investigation conducted, the land under the said survey number was found to be not in possession of the petitioner. It has been further contended that the Power of Attorney and the Affidavit executed by the original lessee in favour of the petitioner conferred power upon him only to manage the property on behalf of the original lessee and, as such, the petitioner was a representative of the original lessee and not an unauthorised occupant. Thus, he could not have been conferred proprietary rights in respect of the land in question. It is concluded in the chargesheet that members of the Committee have, by misuse of their official position and in violation of the provisions of the Roshni Act, conferred undue benefit upon the petitioner. Thus, offences under Section 5(1)(d) read with Section 5(2) of the P.C. Act and Section 120-B RPC are made out against the petitioner and the public servants who have dealt with the case at hand.

**23.** The petitioner has challenged the impugned charge-sheet on the ground that the presumption/foundation of the allegations against the petitioner are refuted and contradicted by the charge-sheet itself. It has been contended that in the charge-sheet itself it has been admitted that the petitioner was in occupation of the land in question. Therefore, to say that he was not in possession of the land in question is self-contradictory. It has also been contended that there is a clerical mistake in the allotment order inasmuch as, instead of Khasra No. 1346, Khasra No. 1364 has

been mentioned in the said order, and on this basis alone, the prosecution against the petitioner cannot be launched. It has been further contended that the petitioner was in occupation of the land in question in his own right and not as an authorised representative of the original lessee. Therefore, he qualifies to be an occupant within the meaning of Section 2(e) of the Roshni Act.

**24.** As per the charge-sheet, land measuring 04 kanals, covered by Plot No. 2 and situated at Estate Rajbagh, Srinagar, was leased out in favour of Dr. Mehbood Afzal Beigh in the year 1976. Mutation was attested in favour of the aforesaid lessee in respect of the said 04 kanals of land comprised in Khasra Nos. 1346, 1347, 1348, 1349 and 1353 on 06.12.1976. The lease was renewed for a period of 40 years with effect from 25.03.1980. As per the charge-sheet, on 06.08.2001 the original lessee executed an Irrevocable General Power of Attorney in favour of the petitioner in respect of a three-storeyed building along with two shops, the superstructure comprising four rooms, one kitchen, two bathrooms and one store room on the ground floor; two shops, two halls, two bathrooms and a store on the first floor; and one hall in the third floor, situated at Rajbagh, Srinagar, known as "Hat Trick Complex", along with land measuring 2,176 sq. ft. (08 marlas).

**25.** On 24.02.2004, the petitioner submitted an application to the Assistant Commissioner, Nazool, Srinagar, seeking conferment of ownership rights in respect of the aforesaid 08 marlas of land comprised in Khasra Nos. 1346, 1349 and 1353 in his favour under the Roshni Act. A report was furnished by the concerned Girdawar, wherein it was confirmed that

the petitioner was in possession of the 08 marlas of land in question. The Deputy Commissioner, Srinagar, vide his letter dated 08.10.2004, communicated to the Divisional Commissioner, Kashmir, that the case could not be considered because the land in question was within 50 feet from the centre of the road. On 30.03.2005, the Committee headed by the Divisional Commissioner, Kashmir, considered the case of the petitioner to the extent of the land which was not required for road widening and which was not hit by the provisions of the J&K Prevention of Ribbon Development Act. The Assistant Commissioner, Nazool, Srinagar, vide his report dated 06.06.2005, recommended a portion of the land measuring 08 marlas for conferment of ownership rights in favour of the petitioner. On 11.07.2007, the Committee under the chairmanship of the Divisional Commissioner, Kashmir, adopted the rate of Rs. 60 lakhs per kanal, whereafter the Deputy Commissioner, Srinagar, issued a demand notice dated 07.08.2007 to the petitioner, directing him to make payment of Rs. 14,40,000/- for land measuring 08 marlas under Survey Nos. 1347 min and 1364 min. The amount of Rs. 10,80,000/- was deposited by the petitioner, and the mutation was also attested in his favour.

**26.** The contention of the respondent-Investigating Agency is twofold: one, that the petitioner had come into possession of the land in question as a representative of the original lessee and not in his own right, and as such, if at all proprietary rights were to be conferred in respect of the land in question, the same were required to be conferred upon the original lessee and not upon the petitioner, who was only an authorised representative

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of the original lessee. The other contention of the Investigating Agency is that the petitioner has been conferred proprietary rights in respect of the land under khasra No. 1364 min, which, during the investigation of the case, was found to be not in his possession.

**27.** In order to determine the merits of the first contention, it would be necessary to understand the meaning of various categories of occupants which have been defined under Section 2 of the Roshni Act. In this regard, it would be apt to refer to the provisions contained in Section 2(a), (b), (e) and (i) of the Act, which are reproduced as under:

> "2. **Definitions**. – In this Act, unless the context otherwise requires-
>
> (a) "authorized occupant" means a person who on the date of the commencement of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Amendment) Act, 2004 is in actual physical possession of the State land, personally or through an authorized agent, by virtue of an existing valid lease or grant made by the competent authority;
>
> (b) "authorized overstayed occupant" means a person who on the date of the commencement of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Amendment) Act, 2004 is in actual physical possession of State land, personally or through an authorized agent, but whose lease or grant has expired and respect of whom no notice for eviction or assumption of lease has been issued by the competent authority;
>
> (c).....
>
> (d).....
>
> (e) "Occupant" means a person who is in actual physical possession of any State land on the commencement of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Amendment) Act, 2004, personally or through an authorized agent;

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(f).....

(g).....

(h).....

(i) "unauthorized expectant occupant" means a person who on the date of the commencement of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Amendment) Act, 2004 is in actual physical possession of the State land, personally or through an authorized agent, and in respect of which lease has expired but no notice for resumption of lease has been issued by the competent authority or who pursuant to this Act has applied in terms of section 5 thereof"

**28.** From a perusal of the aforesaid provisions, it is clear that 'an authorised occupant', 'authorised overstayed occupant', 'occupant' or 'unauthorised expectant occupant' is a person who is in actual physical possession of the State land, personally or through an authorised agent. While 'an authorised occupant' is a person who is in occupation by virtue of an existing valid lease or grant, 'an authorised overstayed occupant' is a person whose lease or grant has expired but who continues to be in possession; 'an occupant' is a person who is in actual physical possession of the State land; whereas 'an unauthorised expectant occupant' is a person who is in actual physical possession of the State land in respect of which the lease has expired but no notice of resumption has been issued, or who has applied in terms of Section 5 of the Act.

**29.** The issue that is required to be determined in this case is as to in which capacity the petitioner was in possession of the land in question. It is to be noted that possession of the petitioner over the allotted land at the

relevant date is not in dispute. The only thing which is in dispute is the capacity in which he was in possession. The survey number of the allotted land, is also an issue which is in dispute.

**30.** In order to find an answer to the question as to in which capacity the petitioner was in possession of the allotted land, one may have to go to the covenants of the Power of Attorney executed by the original lessee in his favour. A copy of the Power of Attorney dated 06.08.2001 is on record of the charge-sheet. As per the covenants of the said Power of Attorney, the original lessee has appointed the petitioner as an attorney holder for the purpose of intended sale/transfer in favour of any person in any manner whatsoever, without the objection of the executant. It also contains a covenant authorising the petitioner to execute sale deeds, transfer deeds, and to transfer leasehold rights in favour of any person. There is also on record a copy of an affidavit dated 06.08.2001 executed by the original lessee, in which he has declared that the petitioner is authorised to manage the property as owner and to enjoy all rights and benefits whatsoever with respect to the said property. It has been further declared by the original lessee that he shall have no right or claim over the said property and that he has himself put the petitioner in peaceful, legal and lawful possession thereof on the spot.

**31.** The charge-sheet also contains a copy of the application addressed by the original lessee to the Minister for Revenue, Government of Jammu and Kashmir, praying for transfer of leasehold rights in respect of land measuring 08 marlas in Plot No. 2 under Survey Nos. 1346, 1347, 1348, 1349 and 1353 in favour of the petitioner. There is another

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communication addressed by the original lessee to the Inspector General of Police, Kashmir Range on record wherein he has admitted that physical possession of the property in question has already been surrendered by him in favour of the petitioner. In fact, the petitioner, prior to applying for conferment of proprietary rights under the Roshni Act in his favour, had applied for transfer of leasehold rights in his favour before the competent authority, but in the meantime the Roshni Act came into operation, whereafter he made an application under the provisions of the said Act before the competent authority. The report of the revenue agency, which forms part of the charge-sheet, indicates that the petitioner has been in possession of the property in question. From all these documents, one comes to the irresistible conclusion that the petitioner was in possession of the property in question in his own right and not as an authorised representative of the original lessee.

**32.** Learned counsel for the respondents has contended that once the original lessee had surrendered possession of the land in question in favour of the petitioner, his lease stood terminated in terms of the covenants of the lease deed and, therefore, the only option for the authorities was to resume the land in accordance with the provisions contained in the J&K Land Grants Act and not to confer proprietary rights in respect of the said land in favour of the petitioner.

**33.** The argument appears to be attractive at first blush, but when examined closely in the light of the provisions of J&K Land Grants Act and the Roshni Act, the argument does not hold much water. If we have a look at Section 4(2)(ii) of the J&K Land Grants Act, it provides that no person

can transfer the leasehold rights granted in his favour, in any manner whatsoever, excepting in favour of a natural inheritor, and any transfer made in contravention of the said restriction shall, *ipso facto,* terminate the lease and the land shall escheat to the State. As per the covenants of the lease deed executed by the Government in favour of the original lessee in the present case, any sub-lease without the permission of the Government entails termination of the lease. In the present case, the documents on record clearly show that the original lessee had violated the conditions of the lease and had also violated the provisions contained in Section 4(2)(ii) of the J&K Land Grants Act by surrendering possession of the land in question in favour of the petitioner. Therefore, the consequence is that the land in question had automatically escheated to the Government, though the resumption proceedings had not been initiated by the Government.

**34.** When one looks at the provisions contained in Section 2(h) of the Roshni Act, it provides that "State land" would mean land recorded as such in the revenue record and would include any land which has escheated to the Government under the provisions of any law for the time being in force in the State, except the land which is excluded under Section 3 of the said Act. Thus, any land which has escheated to the Government under the provisions of any law would come within the definition of "State land". Section 4 of the Roshni Act provides for conferment of proprietary rights in favour of the occupants of the State land, which would include the land escheated to the State.

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**35.** Thus, in the present case, having regard to the facts and circumstances narrated above, the land in question had escheated in favour of the State the moment the original lessee surrendered possession of the said land to the petitioner, who, as per the material collected by the Investigating Agency and placed on record, was in possession thereof at the relevant date. Therefore, the said land was eligible to be transferred in favour of the petitioner in terms of the provisions contained in the Roshni Act. The legislature, by including escheated land within the definition of State land, had provided for its allotment in favour of the occupants of such land as an option instead of resorting to resumption of the said land under the J&K Land Grants Act. Thus, the action of the concerned public servants in proceeding to confer proprietary rights in favour of the petitioner instead of proceeding to resume the said land cannot be termed as 'illegal exercise of power'. The contention of the learned counsel appearing for the respondents is, therefore, without any substance.

**36.** That takes us to the question relating to the identity of the land which has been allotted in favour of the petitioner. It is true that in the allotment order one of the survey numbers mentioned is 1364 and, rightly, the Investigating Agency during investigation of the case has found that the petitioner is not in possession of the land under Survey No. 1364. However, it appears to be a case of clerical error on the part of the authorities while framing the allotment order. The material on record clearly shows that the petitioner had applied for allotment of land measuring 08 marlas in Khasra Nos. 1346, 1347, 1348, 1349 and 1359 min which is borne out of the application of the petitioner, which is on

record of the chargesheet. The revenue record and the reports collected by the Committee prior to conferring ownership rights upon the petitioner also pertain to the land under the aforesaid survey numbers, but it appears that at the time of drafting the allotment order, instead of Survey No. 1346, Survey No. 1364 has been mentioned, which appears to be a clerical error. This, by itself, cannot form a basis for launching prosecution against the petitioner and the other public servants. The allotment order and the mutation can be rectified by correcting this clerical mistake, but the petitioner cannot be prosecuted for this minor clerical error.

**37.** From what has been discussed hereinabove, it is clear that the allegation that the petitioner was not in possession of the land in question in his own right and, despite this, he was conferred proprietary rights in respect of the said land is not substantiated from the material on record. Therefore, it cannot be stated that the petitioner has committed any offence, much less an offence under Sections 5(2) read with Section 5(1)(d) of the P.C. Act and Section 120-B RPC. The charge-sheet, therefore, does not disclose commission of any offence against the petitioner and, as such, deserves to be quashed.

**38.** Accordingly, the petition is allowed and the impugned charge-sheet and the proceedings emanating therefrom against the petitioner are quashed.

**<u>(II) CRM (M) 650/2023</u>**

**39.** The petitioners, Altaf Hussain Khan and others, through the medium of the present petition, have challenged the charge-sheet arising out of FIR

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No. RC1232022A0011 registered with respondent-CBI (ACB, Srinagar) and the proceedings emanating therefrom, which are stated to be pending before the Court of the learned Special Judge, Anti-Corruption (CBI cases), Srinagar. As per the FIR, proprietary rights in respect of land measuring 4 kanals of State land situated on Plot No. **15**, falling in revenue estate Nursingh Garh, Rajbagh, Srinagar**,** under Khasra Nos. 1363 min and 1364 min, respectively, were conferred upon the beneficiaries, namely Gh. Mohiuddin Khan and petitioners Altaf Hussain, Aijaz Ahmad, Naseer Ahmad, Dildar Ahmad, and Farida Akhter under the Roshni Act.

**40.** It is alleged that the said land was originally leased out to one Pt. Hira Nand Raina and was later on transferred to Pt. Sham Lal Bhan. After the death of Pt. Sham Lal Bhan in the year 1991**,** his legal heirs executed an Irrevocable Power of Attorney in favour of the petitioners and Gh. Mohiuddin Khan in the year 2005**,** on the basis of which they applied for vesting of ownership rights under the Roshni Act. According to the FIR, the beneficiaries/petitioners were arbitrarily categorised as unauthorised occupants in violation of the provisions of the Roshni Act.

**41.** After investigation of the case, the Investigating Agency found that the land in question was leased out to Pt. Hira Nand Raina for a period of 40 years, and the lease was to expire on 10.08.1977. The lease was transferred in the name of Pt. Sham Lal Bhan vide order dated 21.06.1991. After the expiry of the initial period of lease of 40 years, the case for further renewal for a period of 20 years was recommended by the Assistant Commissioner, Nazool, Srinagar, vide his letter dated

26.10.1984 in favour of Pt.Sham Lal Bhan to the extent of 2 kanals and 10 marlas of land and in favour of his son Navin Bhan to the extent of 1 kanal and 10 marlas of land. It is alleged that Pt.Sham Lal Bhan died in the year 1991 and the Deputy Secretary to the Government, Revenue Department, vide his letter dated 11.10.2000, recommended renewal/transfer of lease in favour of Navin Bhan, son, and Smt. Mohini Bhan, widow of late Sh. Sham Lal Bhan. It was mentioned by the Assistant Commissioner in his communication that upon spot visit it was found that two tenants, namely Narinder Singh and Gurjeet Singh, were residing in a part of the building as tenants, who were kept there by Smt. Mohini Bhan for watch and ward of the house. The Additional Deputy Commissioner, Nazool, directed the Naib Tehsildar, Nazool, to visit the spot for obtaining the present status in terms of his communication dated 28.03.2003. The Tehsildar, Nazool directed the Naib Tehsildar to comply with the directions of the Additional Deputy Commissioner, Nazool, vide his letter dated 19.11.2004**.** Subsequently, report dated 06.12.2004 was submitted by the Patwari and Girdawar to the Naib Tehsildar, but in the said report nothing was stated about unauthorised occupation of the land in question by the petitioners herein. Another report was submitted by the Naib Tehsildar on 11.12.2004, and in the said report also there was no mention of unauthorised occupation of the land in question by the petitioners. On 07.06.2005, a report was submitted by the Assistant Commissioner, Nazool, to the Commissioner Secretary, Revenue Department, wherein he had categorically stated that the leased premises was being used by the successors-in-interest of the

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lessee in whose favour renewal/transfer was recommended, and in this report also there was no mention of occupation of the land in question by the petitioners.

**42.** It is further alleged in the charge-sheet that vide letter dated 26.07.2005, comments were again sought by the Under Secretary to the Government from the Divisional Commissioner, Kashmir, and thereafter the Divisional Commissioner, Kashmir directed the Assistant Commissioner, Nazool, to furnish a status report vide his letter dated 01.09.2005. In response thereto, the then Assistant Commissioner, Nazool, without furnishing the comments, forwarded the application of the petitioners and Gh. Mohiuddin Khan for vesting of ownership rights under the Roshni Act, whereafter the Committee approved conferment of ownership rights of the land in question in favour of the petitioners and Gh. Mohiuddin Khan.As per the investigation, a notarised Agreement to Sell was executed by the legal heirs of the lessee Sh. Sham Lal Bhan in respect of the land in question in favour of Gh. Mohiuddin Khan and the petitioners. It was mentioned in the said Agreement to Sell that the land in question has been in possession of the petitioners for many years. An affidavit dated 10.06.2005 was also submitted by the petitioners along with their application before the Committee. On 30.07.2005, the application was marked by the Tehsildar, Nazool for obtaining status report from the field staff. A detailed report was submitted by the field staff wherein it was reported that the land in question has been under possession of the petitioners since long. It was also revealed that the legal heirs of the original lessee

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had executed a Power of Attorney dated 13.12.2005 in favour of the petitioners and Gh. Mohiuddin Khan in respect of the land in question.

**43.** The investigation revealed that on 17.01.2006, the then Naib Tehsildar, Nazool, had submitted a report to the Tehsildar stating that upon spot visit the land in question was found to be in possession of the petitioners/beneficiaries, and a recommendation was made that the application can be considered in favour of the applicants for vesting of ownership rights. Accordingly, the Committee conferred ownership rights in respect of the land in question in favour of Gh. Mohiuddin Khan and his legal heirs, the petitioners herein.

**44.** The petitioners have challenged the impugned charge-sheet on the ground that they were in occupation of the land in question, which is being admitted by the respondent-Investigating Agency in the charge-sheet, and as such, in terms of Section 5 of the Roshni Act, they were entitled to be conferred proprietary rights in respect of the land in question, which is admittedly the State land. It has been further contended that the accusations made in the FIR and the charge-sheet, even if taken to be true at their face value, do not constitute any offence against the petitioners. It has also been contended that the allegations made in the FIR are totally baseless and without any supportive material.

**45.** The main contention raised in the charge-sheet is that the petitioners were not in actual occupation of the land in question on the crucial date for application of the provisions of the Roshni Act. It has been contended that the petitioners do not qualify to be "occupants" within the meaning of Section 2(e) of the Roshni Act, as there is no material on

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record to suggest that they were in physical possession of the land in question on the commencement of the J&K State Lands (Vesting of Ownership to Occupants) Amendment Act, 2004, either in their personal capacity or through an authorised agent.

**46.** There appears to be merit in the submission made by the respondent-Investigating Agency. A perusal of the material on record shows that as per the report dated 06.12.2004 submitted by the field staff for processing the case of successors-in-interest of Sh. Sham Lal Bhan for transfer of leasehold rights in their favour, nothing has been stated about authorised or unauthorised possession of the land in question by the petitioners and Gh. Mohiuddin Khan. Another report dated 11.12.2004 was submitted by the Naib Tehsildar in which nothing was reported about the authorised or unauthorised possession of the land in question by the petitioners and Gh. Mohiuddin Khan.It was only when the petitioners and Gh. Mohiuddin Khan submitted their application for conferment of proprietary rights under the Roshni Act on 10.06.2005 that the field staff reported that they were in occupation of the land in question on the basis of an Agreement to Sell dated 21.05.2005 and a Power of Attorney dated 13.12.2005. Both these documents were executed by the successors-in-interest of the lessee in favour of the petitioners and Gh. Mohiuddin Khan after the crucial date, i.e., the date of commencement of the Amendment Act, 2004, which is 21.05.2004**.**

**47.** As per Section 2(e) of the Roshni Act, an "occupant" means a person who is in actual physical possession of any State land on the commencement of the Amendment Act, 2004, meaning thereby that a

person can be treated as an occupant of State land, whether authorised or unauthorised, only if he was in possession of the said land as on 21.05.2004. The petitioners have come into occupation of the land in question after the aforesaid date, which is clear from the documents on record, as such, they do not qualify as "occupants" within the meaning of Section 2(e) of the Roshni Act. Section 5 of the Roshni Act provides for conferment of proprietary rights in respect of State land only in favour of occupants of such land. Since the petitioners, as per the material on record, were not occupying the State land on the crucial date, i.e., on 21.05.2004, as such, their application could not have been considered by the Committee.

**48.** Although it is provided in the Power of Attorney and the Agreement to Sell alleged to have been executed by the successors-interest of the lessee in favour of the petitioners that they are in possession since long, yet there is overwhelming material on record to show that even up to December 2004, the petitioners were not in occupation of the land in question. The issue as to whether the material collected by the Investigating Agency stating that the petitioners were not in occupation of the land in question even up to December 2004, or whether the covenants of the Power of Attorney and the Agreement to Sell showing the petitioners to be in occupation since long, are to be relied upon, becomes a matter of trial. The same cannot be gone into at this stage and in these proceedings. The Committee, by ignoring the earlier reports of the field agency has committed a blatant violation of the provisions of the Roshni Act while implementing the scheme, which has resulted in

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conferment of undue benefit upon the petitioners on account of misuse of official position by the concerned public servants responsible for processing the application of the petitioners. Thus, prima facie, the offence of criminal misconduct is made out against the concerned public servants. Since their acts have resulted in conferment of undue benefit upon the petitioners who were, prima facie, not in occupation of the land in question on the crucial date, it can safely be inferred at this stage that they were in league and conspiracy with the concerned public servants.

**49.** For what has been discussed hereinbefore, it cannot be stated that no offence is made out against the petitioners. The petition, therefore, lacks merit and deserves to be dismissed. The same is, accordingly, dismissed.

**(III) CRM Nos. 74/22 and 251/2022:**

**50.** The petitioners through the medium of these two petitions, have challenged the proceedings emanating from the charge-sheet arising out of FIR No. RC1232021A003 registered with CBI (ACB, Srinagar), which is stated to be pending before the Court of the learned Special Judge, Anti-Corruption (CBI cases), Srinagar.

**51.** It appears that initially FIR No. 29/2015 came to be registered by Police Station, Vigilance Organisation Kashmir. In the said FIR, it was alleged that officers/officials of the Revenue Department of District Pulwama, by abusing their official positions, in league with the beneficiaries, violated the provisions of the Roshni Act and conferred undue pecuniary benefits upon illegal occupants of State land by arbitrarily fixing the price of land at a rate lower than the prevailing market rate of the area,

by incorrectly applying the rates, and by unauthorisedly changing the classification of land from residential to agricultural, thereby causing huge monetary loss to the State exchequer. It was alleged that ownership rights of State land measuring 06 kanals, 10 marlas and 4 sarsai falling under Khasra Nos. 754 min and 631 min were transferred to the unauthorised occupants, including petitioner Dr. Farhat Pandith, by the members of the Committee, which included petitioners Mehraj Ahmad Kakroo, the then Deputy Commissioner, Pulwama; Iftikhar Hussain, the then Deputy Commissioner, Pulwama; Mohd. Hussain Mir, the then Tehsildar, Pulwama; and Mohd. Maqbool Ahanger, the then Naib Tehsildar. It was also alleged that out of the land in question, land measuring 4 kanals, 2 marlas and 7 sarsai was falling within 75/50 feet of the main link road and, as such, was not permissible for vesting of ownership rights under the Roshni Act.

**52.** The Vigilance Organisation Kashmir investigated the allegations levelled in the FIR and came to the conclusion that the said allegations were not substantiated from the material collected during investigation of the case. Accordingly, a closure report was filed before the Court of learned Special Judge, Anti-Corruption, Pulwama. While the said report was pending consideration before the said Court, a Division Bench of this Court, in Professor S.K. Bhalla's case (supra), issued directions for handing over investigation of all such cases to the respondent-CBI, including the cases where charge-sheets/closure reports have been filed before various courts. On this basis, the learned Special Judge, Anti-Corruption, Pulwama, returned the closure report to the Investigating

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Agency, namely Vigilance Organisation Kashmir, for its onward transmission to the CBI, whereafter the respondent-CBI proceeded to conduct further investigation of the case. After investigation of the case, the allegations regarding arbitrary fixing of price of the land lower than the prevailing market rate of the area, incorrect application of rates, as also the allegation relating to unauthorised change of classification of land from residential to agricultural, were found not substantiated. It was found that the rate of the land has been fixed as per the use of the land by the Committee and the allotted land has not been treated as agricultural land.

**53.** The respondent-Investigating Agency, however, found that the allegation with regard to conferment of ownership rights in violation of Section 4(1-A) of the Roshni Act is proved. It was found by the Investigating Agency that the distance of the land allotted in favour of petitioner Dr. Farhat Pandith from the centre of the adjacent road was 14 feet; the distance of the land allotted in favour of beneficiary Gh. Ahmad Pandit was found to be 20 feet and 10 feet from the centre of the adjacent road; the distance of land allotted in favour of Gh. Nabi Naik was found to be 23 feet from the centre of the adjacent road; the distance of land allotted in favour of Gh. Rasool Wani was found to be 24 feet from the centre of the adjacent road; the distance of land allotted in favour of beneficiary Mohd. Amin Pandit was found to be 14 feet from the centre of the road, whereas the distance of land allotted in favour of beneficiary Abdul Majeed Sheikh was found to be 22 feet from the centre of the road. Thus, as per the Investigating Agency, the land was allotted in favour of

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the aforesaid six beneficiaries in violation of the provisions contained in Section 4(1-A) of the Roshni Act. It was, however, found that mutation was attested only in respect of land allotted in favour of petitioner Dr. Farhat Pandith and beneficiaries Gh. Rasool Wani and Mohd. Amin Pandit, and not in favour of the other three beneficiaries.

**54.** The petitioners have challenged the impugned charge-sheet on the ground that once the closure report was pending consideration before the learned Special Judge, Anti-Corruption, Pulwama, it was not open to the said Court to return the closure report for further consideration by the CBI. It has also been contended that all the cases of allotment made in violation of the provisions contained in Section 4(1-A) of the Roshni Act were reconsidered, and a detailed order was issued by the Deputy Commissioner, Pulwama, on 03.09.2015, with prior approval of the Administrative Department, whereby the mutations, to the extent the same were in violation of Section 4(1-A) of the Roshni Act, were cancelled. It has been submitted that it is only for this reason that the respondent-Investigating Agency has prosecuted only one beneficiary and not the other five beneficiaries.

**55.** The only allegation on the basis of which the petitioners have been prosecuted is that while conferring ownership rights in respect of the land in favour of six beneficiaries, including petitioner Dr. Farhat Pandit, violation of the provisions contained in Section 4(1-A) of the Roshni Act has been committed. To understand the issue involved in these cases, it is necessary to have a perusal of the provisions contained in Section 4(1-A) of the Roshni Act, which reads as under:

"4(1-A) State land in possession of: -

(i) an authorized occupant may be converted into freehold rights by the Committee in favour of the occupant unless he opts for exercising his lease hold rights;

(ii) an occupant at the commencement of the Jammu and Kashmir State Lands (Vesting of Ownership to the Occupants) (Amendment) Act, 2004 may be considered for conversion into freehold rights by the Committee in such manner as may be prescribed:

Provided that the State land falling within 50 feet and 75 feet from the centre on either side of any interior road and highway, respectively, shall be considered by the Government only for grant of leasehold rights initially for a period of forty years subject to conversion in the term of lease or resumption of such State land in the public interest on expiry of the initial term of lease".

**56.** From a perusal of the proviso to sub-section (1-A) of Section 4 quoted above, it comes to the fore that State land falling within 50 feet and 75 feet from the centre on either side of any interior road and highway, respectively, can be considered by the Government only for grant of leasehold rights initially for a period of forty years, subject to conversion in the term of lease or resumption of such State land in the public interest on expiry of the initial term of lease. A careful analysis of the said provision would lead to the conclusion that allotment of land falling within 50 feet/75 feet from the centre of the road/highway is not totally prohibited. The prohibition is with respect to conferment of proprietary rights in respect of such portion of State land for the initial period of forty years. Nonetheless, it is open to the Committee to make allotment of such portion of State land in favour of a beneficiary on leasehold basis

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for an initial period of forty years, which can be converted after expiry of the said period or, in the alternative, the same can be resumed by the State in public interest.

**57.** In the instant case, the petitioners-public servants, instead of granting lease in favour of the beneficiaries in respect of the State land falling within the purview of 50/75 feet from the centre of the road, proceeded to confer ownership rights of the land in favour of the beneficiaries. The violation committed by the public servants is not of such a gross nature as would amount to misuse of official position, particularly when there is no material on record to show that the concerned public servants have obtained any undue benefit for themselves. To top it all, the mutations attested in favour of the beneficiaries in respect of the portion of allotted land which comes within the mischief of the proviso to Section 4(1-A) of the Roshni Act stand cancelled way back in the year 2015, even before registration of the FIR. This goes on to show that the concerned public servants had no mala fide intention in making the allotment of the land in question in favour of the beneficiaries. Section 15 of the Roshni Act provided indemnity to the officers and authorities in respect of actions taken in good faith under the provisions of the Act and the Rules. Since the impugned action of the petitioners/public servants is not shown to be mala fide in nature, as such, they cannot be prosecuted.

**58.** In the absence of any material on record to show that the accused public servants had either adopted any corrupt means or obtained any pecuniary advantage for themselves, it cannot be stated that the offence of criminal misconduct is made out against them. Dishonest intention is the gist of

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the offence under Section 5(1)(d) of the Prevention of Corruption Act which is punishable under Section 5(2) of the said Act. Unless it is shown that a public servant has, by corruption or illegal means, abused his position, it cannot be stated that he has committed the offence of criminal misconduct. In the instant case, merely because the concerned public servants, instead of granting lease for forty years in favour of the beneficiaries in respect of a portion of the State land in question, have conferred ownership of the State land in their favour and the same was subsequently cancelled even before launching of prosecution against them, it cannot be stated that they have committed the offence of criminal misconduct.

**59.** For what has been discussed hereinbefore, it can safely be stated that the material collected by the Investigating Agency during investigation of the case does not make out a case of criminal misconduct against the petitioners. Mere minor violation of a statute, without there being any evidence on record to show that the petitioners/public servants indulged in any corrupt practice or exhibited any dishonest intention, cannot form a basis for their prosecution. Therefore, the impugned charge-sheet and the proceedings emanating therefrom deserve to be quashed.

**60.** Accordingly, both the aforesaid two petitions are allowed and the impugned chargesheet and the proceedings emanating therefrom against the petitioners are quashed.

**(IV). CRM (M) No. 427/2023, Crl. R Nos. 36, 37, 38 & 39 of 2023**

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**61.** Vide the afore-titled petitions, the petitioners/accused have thrown challenge to the charge-sheet emanating out of FIR No. RC1232020A004 registered with respondent CBI (ACB, Srinagar). Challenge has also been thrown to order dated 15.07.2023 passed by the learned Special Judge, Anti-Corruption (CBI cases), Srinagar, whereby, on the basis of the impugned charge-sheet, charges for offences under Section 5(1)(d) & 5(2) of the Prevention of Corruption Act read with Section 120-B RPC have been framed against the petitioners.

**62.** **CRM (M) No. 427/2023** has been filed by Basharat Ahmad Dar, the then Divisional Commissioner, Kashmir; **Cr. Revision No. 37 of 2023** has been filed by Sheikh Mehboob Iqbal, the then Divisional Commissioner, Kashmir; **Cr. Revision No. 36 of 2023** has been filed by Sheikh Ejaz Iqbal, the then Deputy Commissioner, Srinagar; **Cr. Revision No. 38 of 2023** has been filed by Mushtaq Ahmad Malik, the then Assistant Commissioner, Nazool, Srinagar; and **Cr. Revision No. 39 of 2023** has been filed by Mohd. Akram Khan, the then Tehsildar, Nazool, Srinagar.

**63.** As per the FIR, in the year 2007, ownership rights of State land measuring 7 kanals and 7 marlas under Khasra Nos. 216, 217 and 218 situated in Estate Narsingh Garh at Shaheed Gunj, Srinagar, were vested in favour of one Sajjad Parvaiz under the commercial category at the rate of Rs. 45 lakhs per kanal by the Empowered Committee in its meeting held on 28.04.2007. It is alleged that said Sajjad Parvaiz was not an occupant of the State land in terms of Section 2(e) of the Roshni Act, and as such, ownership rights could not have been conferred upon him.

He was only an authorised agent of lessees Ashok Sharma and Vipan Sharma by virtue of a Special Power of Attorney, but despite this, the Empowered Committee conferred ownership rights in his favour. It is also alleged that out of the leased/possessed land measuring 7 kanals and 7 marlas, an area of 01 kanal 04 marlas (33 × 228 feet) was hit by the Prevention of Ribbon Development Act, and only the remaining area i.e. 6 kanals and 3 marlas was available for conferment of ownership rights to the occupant. However, in disregard of the provisions of the Roshni Act, the Empowered Committee declared Sh. Sajjad Parvaiz owner of the entire chunk of land measuring 7 kanals and 7 marlas.

**64.** The further allegation is that on 09.08.2007, the subsequent Empowered Committee, acting on the application of Sh. Sajjad Parvaiz, changed his category from commercial to residential without ascertaining the use of land from field formations merely on the basis of the application of the beneficiary. The patch of land measuring 7 kanals and 7 marlas allotted in favour of the beneficiary could have fetched Rs. 2,14,98,750/- to the State exchequer under the commercial category, but only an amount of Rs. 1,17,28,125/- was paid by the beneficiary under the residential category, thereby causing a loss of Rs. 97,70,625/- to the State exchequer. On the basis of these allegations, it has been alleged that offences under Sections 5(1)(c), 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act stand established against the petitioners.

**65.** The Investigating Agency, after conducting investigation into the allegations levelled in the FIR, found that the land in question was leased out to Ashok Sharma and Vipan Sharma, sons of Sh. R.L. Sharma, for a

period of 40 years w.e.f. 14.04.1949 up to 13.04.1989, and later on, the lease was renewed for a further period of 19 years, which was to expire on 13.04.2008. After renewal of the lease in the year 2003, the original lessees executed a Special Power of Attorney in favour of beneficiary Sajjad Parvaiz on 06.12.2003 and they also entered into a Sale Agreement for an amount of Rs. 56 lakhs on 08.12.2003.

**66.** It is alleged that in February 2004, the Nazool Department recommended eviction proceedings against the original lessees, but in June 2004, the beneficiary Sajjad Parvaiz applied for vesting of ownership rights before the Divisional Commissioner, Kashmir. The field staff reported that the land in question is in occupation of Sh. Sajjad Parvaiz by virtue of the Power of Attorney and that land measuring 1 kanal and 4 marlas situated towards the general road was hit by the Prevention of Ribbon Development Act, leaving only 6 kanals and 3 marlas available for vesting of ownership rights. The case for vesting of ownership in favour of Sajjad Parvaiz was forwarded to the Empowered Committee constituted under Section 12 of the Roshni Act, which was headed by Sh. Khursheed Ahmad Ganai, the then Divisional Commissioner, Kashmir. The Committee in its report rendered an opinion that the case is not covered under the provisions of the Roshni Act and sought clarification from the Government. However, the Committee proposed a rate of Rs. 25 lakhs per kanal.

**67.** The Investigating Agency further found that the case was again taken up by the Committee on 28.11.2004, and it was recorded that the offer of rates has not been accepted by the applicant and,, as such, it was decided

to proceed with auction proceedings and the case was forwarded to the Government along with the recommendations of the Committee. The Administrative Department observed that the lessees are not interested in retention/use of the land and that a third party wants to grab the land by misusing the Power of Attorney. Accordingly, resumption of the land was recommended vide communication dated 25.09.2006, and a notice was issued to the lessees by the Assistant Commissioner, Nazool, on 09.11.2006.

**68.** It is further averred in the charge-sheet that amendments to the Roshni Act were made in the year 2007, whereby Section 13-A was incorporated. Thereafter, the beneficiary Sajjad Parvaiz moved a fresh application. The same was considered by the Committee headed by petitioner Basharat Ahmad Dar on 19.04.2007. After obtaining NOC from the Deputy Commissioner, Srinagar, the matter was placed before the Committee on 28.04.2007, which decided the rate of Rs. 45 lakhs per kanal. It was observed by the committee that the land in question is residential/commercial and falls within the category of Rule 13- II(iii) of the Jammu and Kashmir State Lands (Vesting of ownership to the occupants) Rules, 2007 (" Rules of 2007" for short) and the beneficiary is required to pay 60% of the adopted amount i.e. Rs. 1,98,45,000/-, with a rebate of 25% if payment is made within three months. It was revealed that the Committee ignored the fact that a portion of the allotted land was falling within 50/75 feet from the centre of the road and, as such, could not have been allotted in view of Section 4(1-A) of the Roshni

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Act. Thus, excess land measuring 8 feet × 228 feet was required to be deducted.

**69.** The investigation also revealed that the beneficiary Sajjad Parvaiz did not deposit the amount and instead moved an application before the Deputy Commissioner, Srinagar, seeking a change of category from commercial to residential. The application was placed before the Committee headed by petitioner Mehboob Iqbal, the then Divisional Commissioner, Kashmir, and on 09.08.2007, the same was accepted, resulting in a pecuniary benefit of Rs. 31,55,625/- to the beneficiary.

**70.** On the basis of the aforesaid allegations supported by material on record, it has been found that the offences under Section 120-B RPC read with Section 420 RPC and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act stand established against the petitioners.

**71.** The learned Special Judge, Anti-Corruption, (CBI cases), Srinagar after considering the material on record, accepted the contentions of the Investigating Agency and concluded that offences under Section 120-B RPC read with Sections 5(1)(d) / 5(2) of the PC Act are made out against the petitioners. Accordingly, vide impugned order dated 15.07.2023, charges for aforesaid offences have been framed against the petitioners.

**72.** The petitioners have challenged the impugned charge-sheet and the impugned order passed by the learned Special Judge, Anti-Corruption (CBI cases), Srinagar, on the ground that the beneficiary Sajjad Parvaiz qualifies to be an *occupant* within the meaning of Section 2(e) of the Roshni Act, as he was an unauthorised occupant of the State land in question after having acquired possession thereof on the basis of a Power

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of Attorney and Agreement to Sell executed by the original lessees. Therefore, the contention of the Investigating Agency that the beneficiary does not qualify to be an "occupant" is without any substance. It is being contended that the contention of the respondents that the Committee did not consider the direction of the Government for auction of the land in question is misconceived, because after insertion of Section 13-A in the Roshni Act by virtue of the Amendment Act of 2007, all pending cases, including the case of beneficiary Sajjad Parvaiz, were forwarded by the Government itself to the Committee for consideration. It has further been contended that the land allotted in favour of the beneficiary was to be used for residential purposes and, as such, the Committee was well within its power to review the price fixed by the earlier Committee. It has also been contended that since the order passed by the Committee was quasi-judicial in nature, as such members of the subsequent Committee cannot be prosecuted even if it is assumed that they had erred in reviewing the earlier price fixation.

**73.** The first allegation on the basis of which the petitioners have been prosecuted are that the beneficiary Sajjad Parvaiz was not an occupant in his own right of the land in question and, as such, he was not eligible for conferment of proprietary rights under the Roshni Act. The second allegation is that once the Committee headed by Sh. Khursheed Ahmad Ganai, the then Divisional Commissioner, Kashmir, had recommended that the land in question was required to be resumed and action in this regard was initiated by the Government, the subsequent Committees comprising the petitioners could not have proceeded with allotment of

the land in question in favour of the beneficiary. The third allegation against the petitioners is that in view of the provisions contained in Section 4(1-A) of the Roshni Act, the entire chunk of land measuring 7 kanals and 7 marlas could not have been vested in favour of the beneficiary and, instead, an area measuring 33 × 228 feet was required to be deducted while vesting ownership. The last allegation, on the basis of which the petitioners except petitioner Basharat Ahmad Dar have been prosecuted, is that it was not open to the said petitioners to review the price fixation by treating the land allotted in favour of the beneficiary as residential instead of commercial.

**74.** Regarding the first allegation, it is to be noted that it is the admitted case of the prosecution that the original lessees, namely Ashok Sharma and Vipan Sharma, had executed a Power of Attorney in favour of beneficiary Sajjad Parvaiz, which was registered by the Sub-Registrar, Jammu, on 06.12.2003. Vide the said Power of Attorney, the original lessees authorised the beneficiary to appoint further attorneys, to get the property transferred in favour of any person, to deal with the property in any manner whatsoever, and to do all acts required for valid transfer of the said property. On 08.12.2023, the lessees also executed an Agreement to Sell in favour of the beneficiary and, as per the charge-sheet, the sale agreement was made for a consideration of Rs. 56 lakhs**.** There is also material on record to show that the first Committee headed by Sh. Khursheed Ahmad Ganai had opined that it was a case of creation of third-party interest by the original lessees and, in fact, the Government had decided to resume the land.

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**75.** As already discussed hereinbefore, in terms of the provisions contained in the Roshni Act, an occupant of State land becomes eligible for vesting of ownership of the said land. As per Section 2(e) of the Roshni Act, an occupant means a person who is in actual physical possession of any State land personally or through an authorised agent. The contention of the respondent-Investigating Agency is that the beneficiary Sajjad Parvaiz was in occupation of the land in question as an authorised agent of the original lessees. However, upon a careful examination of the contents of the Power of Attorney executed by the original lessees in favour of the beneficiary, Sajjad Parvaiz, the Agreement to Sell, and the opinion rendered by the first Committee headed by Shri Khursheed Ahmad Ganai, there remains no manner of doubt in holding that Sajjad Parvaiz was occupying the land in question in his own right, and that the original lessees had surrendered possession thereof in his favour by creating a third-party interest, in violation of the terms of the lease as well as Section 4(2)(ii) of the J&K Land Grants Act.. As a consequence thereof, the lease in respect of the land in question in favour of the original lessees stood terminated the moment they transferred possession of the land in question in favour of the beneficiary Sajjad Parvaiz, and the said land escheated to the State.

**76.** As per Section 2(h) of the Roshni Act, State land includes land which has escheated to the Government under the provisions of any law for the time being in force. Thus, the land, which is the subject matter of the present case, had automatically escheated to the Government, but the resumption proceedings in respect of the said land had not concluded, as

such, the land qualifies to be State land which is eligible to be vested in favour of its occupant, namely the beneficiary Sajjad Parvaiz. The contention of the respondent-Investigating Agency that the land in question could not have been vested in favour of beneficiary Sajad Parvaiz is, therefore, misconceived.

**77.** The second contention raised in the charge-sheet is that once the first Committee headed by Sh. Khursheed Ahmad Ganai, the then Divisional Commissioner, Kashmir, had recommended that the land in question was required to be resumed and could not be allotted in favour of the beneficiary, it was not open to the subsequent Committees to proceed ahead with vesting of rights in favour of the beneficiary. In this regard, it is to be noted that in the charge-sheet itself it is mentioned that in the year 2007, the Roshni Act was amended and Section 13-A was incorporated. As per the said provision, pending cases were required to be decided in accordance with the provisions of the Roshni Act as amended. The charge-sheet is accompanied by a communication dated 21.12.2006 addressed by the Administrative Department to the Divisional Commissioner, Kashmir, wherein, after noticing the provisions of Section 13-A of the amended Act, it has been observed that 23 pending cases are being returned for necessary action in light of Section 13-A of the Act. One of these 23 cases that were forwarded by the Administrative Department to the Divisional Commissioner, Kashmir, was the case pertaining to beneficiary Sajjad Parvaiz, which is the subject matter of the present petitions. When the first Committee headed by Sh. Khursheed Ahmad Ganai forwarded its recommendations

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to the Government regarding the case of Sajjad Parvaiz, the Government, instead of proceeding to resume the land, returned the case of the beneficiary along with the other 22 cases to the Divisional Commissioner in terms of the aforesaid communication dated 21.12.2006, observing that these pending cases are required to be considered in light of the amended provisions of Section 13-A of the Act. In such circumstances, the subsequent Committee headed by the Divisional Commissioner had no option but to consider the case of the beneficiary Sajjad Parvaiz afresh, as the Government had decided not to proceed with resumption of land and had instead placed the matter once again before the Committee constituted under the Roshni Act.

**78.** It is in the aforesaid circumstances that the subsequent Committee headed by petitioner Basharat Ahmad Dar proceeded to consider the case of the beneficiary Sajjad Parvaiz afresh and rendered its decision vide meeting dated 28.04.2007 by fixing the rate of the land at Rs. 45 lakhs per kanal and adopting the rate on the basis of the commercial category. Thus, it cannot be stated that the subsequent Committee headed by petitioner Basharat Ahmad Dar has ignored the recommendations of the earlier Committee, because once the matter was sent by the Government for reconsideration in view of the amended provisions of the Roshni Act, the Committee had to proceed accordingly.

**79.** As regards the third contention of the respondent-Investigating Agency, it is to be noted that proviso to Section 4(1-A) of the Roshni Act does not place a blanket ban on allotment of land in favour of a beneficiary falling within 50/75 feet from the centre of the road, but it only provides

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for grant of leasehold rights initially for a period of forty years, whereafter there is an option for conversion or resumption of the State land to the aforesaid extent. To accept the contention of the respondent-Investigating Agency that, in the present case, the petitioners, while considering the case of the beneficiary Sajjad Parvaiz, have ignored the provisions of Section 4(1-A) of the Roshni Act and thereby committed the offence of criminal misconduct, would be stretching the matter too far. As already discussed hereinbefore, a minor violation in implementing a statutory provision, without there being any material to suggest that the public servant has indulged in any corrupt practice or that he had acted in a dishonest or mala fide manner, or obtained any pecuniary benefit, may not be a good enough reason to prosecute the said public servant for the offence of criminal misconduct. In the present case, even if the Committee has not deducted 33x228 feet land while vesting ownership in favour of the beneficiary, nonetheless because there was no blanket ban on vesting of the land as the same could have been allotted in favour of the beneficiary on leasehold basis, the violation committed by the Committee is not of such a grave nature as to attract the offence of criminal misconduct. Even otherwise, the impugned action in the absence of any material to the contrary appears to be bonafide in nature, as such, the same is protected by the provisions contained in Section 15 of the Roshni Act.

**80.** The last contention pressed by the respondent-Investigating Agency against the petitioners, except petitioner **Basharat Ahmad Dar**, is that the Committee headed by petitioner Mehboob Iqbal, in its meeting dated

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09.08.2007, reviewed the price fixed by treating the land as residential in nature. In this context, it is to be noted that the Committee headed by petitioner Basharat Ahmad Dar, in its meeting dated 28.04.2007, adopted the rate of Rs. 45 lakhs per kanal. It is noted in the minutes of the meeting dated 28.04.2007 that the land in question is residential/commercial and thus falls within the category of Rule 13 (II)(iii) of the Rules of 2007, as such the beneficiary has to pay **60%** of the adopted amount, which comes to Rs. 1,98,45,000/-**,** with a rebate of 25% if the beneficiary pays the said amount within three months.

**81.** It appears that the beneficiary Sajjad Parvaiz made an application seeking review of the rate fixed, claiming that he has opted only for residential activities and, therefore, the rate adopted by the Committee under commercial category is required to be reviewed. The Committee, in its meeting dated 09.08.2007, considered the review application of the beneficiary and decided that 2 kanals of land fall under the category of Rule 13-I(i)(a) of the Rules of 2007 and the share portion of the land is eligible for payment of the adopted amount to the tune of 40% and, for the remaining 5 kanals and 7 marlas of land, the beneficiary has to pay 50% of the adopted amount, as the same fall under the category of Rule 13-I(ii)(b) of the Rules of 2007. Thus, the beneficiary was asked to pay Rs. 1,56,37,500**/-** instead of Rs. 1,98,45,000/-**.**

**82.** To understand the controversy, the relevant provisions contained in the Rules of 2007 are required to be noted. Rule 13 of the Rules of 2007 provides for fixation of price payable by different categories of occupants. Rule 13- 1 (iii) pertains to unauthorised occupation where no

lease has been granted or where no allotment has been made by the Government. As per this Rule, upto 02 kanals, 40% of the value of the land, determined by the Committee, represents the price payable, and from 03 kanals to 10 kanals**,** 50% of the value of the land, determined by the Committee, is payable by the occupant. Rule 13- II (iii), provides that an unauthorised occupant has to pay 60% of the value of the land**,** determined by the Committee. The first proviso to Rule 13 lays down that where the land is in residential as well as commercial use, the rates applicable to commercial use shall apply. Rule 15 of the Rules vests power in an officer exercising powers under the Roshni Act to review, modify, reverse, or confirm any order passed by himself or by any officer predecessor in office within a period of 15 days from the date of issuance of such order, whereas Rule 17 provides for an appeal against an order of the Committee. Section 7 of the Roshni Act also provides for remedy of appeal against an order passed by the Committee relating to the price for vesting of freehold rights in favour of an occupant before the Government.

**83.** As already stated, in the present case, vide minutes of the meeting dated **28.04.2007**, the Committee decided to adopt the rate of Rs. 45.00 lakhs per kanal in respect of the land of beneficiary Sajjad Parvaiz and categorised the said land as residential/commercial, adopting the rate in terms of Rule 13-II (iii) of the Rules. The record shows that the beneficiary, Sajjad Parvaiz, made an application to the Deputy Commissioner, Srinagar**,** on 07.08.2007**,** seeking review of the rates by making a request that he had opted for residential purpose only and that

his case may be treated under the residential category. The said application was considered by the subsequent Committee headed by the petitioner Mehboob Iqbal in its meeting dated 09.08.2007**.** The allegation in the chargesheet is that no fresh report with regard to the user of the land in question was obtained by the Committee before reviewing the rates. The same appears to be well founded because, in the matter of one day, the case was put up by the Deputy Commissioner, Srinagar, before the Committee and the decision was taken on 09.08.2007 itself. Thus, without verifying the veracity of claim of the occupant, the Committee proceeded to accept his claim**.**

**84.** In addition to the above, if we have a look at the provisions contained in the first proviso to Rule 13 of the Rules, it is categorically laid down that where the land is in residential as well as commercial use, the rates applicable to the commercial category shall apply. Merely because the beneficiary had projected that he had opted for residential use only would not entitle him to the rates of the residential category once the land in question could have been put to both residential and commercial use. In such circumstances, the first proviso to Rule 13 of the Rules would get attracted. It is for this reason that the Committee headed by the petitioner Basharat Ahmad Dar had consciously treated the case of the beneficiary under the commercial category by raising the demand in terms of **Rule 13 II (iii)** of the Rules. The course adopted by the Committee headed by the petitioner Mehboob Iqbal in its meeting dated 09.08.2007, in treating the case of the beneficiary under the residential category, appears to be in blatant violation of the provisions contained in

the first proviso to Rule 13 of the Rules. Besides this, it seems that no fresh inquiry with regard to the claim of the beneficiary that he had opted for residential use only has been conducted before extending the benefit of residential category rates upon the occupant/beneficiary.

**85.** Apart from the above, the Committee had no power to review the rates. Rule 15 of the Rules vests power in an officer exercising powers under the Roshni Act to review his orders if the application is made within 15 days of passing of the order. So far as the orders passed by the Committee with regard to fixation of rates are concerned, the same cannot be reviewed by the Committee, as only an appeal is provided against such orders in terms of Section 7 of the Roshni Act read with Rule 17 of the Rules. It is specifically provided in Rule 15 that review is available against the orders passed by an officer exercising powers under the Roshni Act. There is no mention of the word "Committee" in Rule 15, whereas Rule 17 and Section 7 of the Act clearly provide for an appeal against an order of the Committee with regard to fixation of price. Thus, an appeal is provided against an order of the Committee fixing the price, but no review is provided under the Rules or the Act against such an order. Therefore, it was not open to the Committee to review its order with regard to price fixation. The only remedy available to the beneficiary against the order of the Committee fixing the price of the land was to file an appeal before the Government. Even otherwise, the application made by the beneficiary was beyond the period of 15 days from the date of passing of the order of the Committee sought to be reviewed.

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**86.** Thus, the action of the Committee headed by petitioner Mehboob Iqbal in reviewing the rates is without jurisdiction and in derogation of the provisions contained in the Act and the Rules framed thereunder. The said action of the Committee is in blatant violation of the Act and the Rules. Thus, prima facie, it appears that the members of the Committee headed by petitioner Mehboob Iqbal have misused their official position by reviewing the rates adopted by the Committee in its meeting dated 28.04.2007 which has resulted in loss of Rs. 31,55,625**/-** to the State exchequer, because the beneficiary has been vested with ownership rights in respect of the State land in question for an amount less than what was required to be deposited by him in terms of the decision taken by the Committee headed by petitioner Basharat Ahmad Dar in its meeting dated 28.04.2007**.**

**87.** From the foregoing discussion, it is clear that offences under Section 5(1)(d) read with Section 5(2) of the PC Act **are** prima facie established against the petitioners except the petitioner **Basharat Ahmad Dar**. To the aforesaid extent, the impugned order passed by the Special Judge, Anti-Corruption**,** on 15.07.2023, is upheld. However, the said order, to the extent of framing of charges against the petitioner Basharat Ahmad Dar, being not sustainable in law, is set aside.

**88.** Accordingly, while allowing the petition filed by petitioner Basharat Ahmed Dar, CRM(M) No. 427/2023, the revision petitions being Crl. R Nos. 36, 37, 38 & 39 of 2023 filed by other petitioners are dismissed.

**(V) CRM(M) No. 328/2024 & CRM(M) No. 308/2024**

**89.** Through the medium of the afore-titled two petitions, the petitioners have challenged FIR No. RC1232022A0010, registered with Police Station CBI (ACB Srinagar), for offences under Section 120-B RPC and Sections 5(2) read with Section 5(1)(d) of the PC Act, as also the challan emanating therefrom, which is stated to be pending before the Court of the Special Judge, Anti-Corruption (CBI Cases), Srinagar.CRM(M) No. 328/2024 has been filed by the petitioner Basharat Ahmad Dar, the then Divisional Commissioner, Kashmir, whereas CRM(M) No. 308/2024 has been filed by Dr. Mushtaq Ahmad Bakshi and Ms. Bilquis Bakshi, the beneficiaries.

**90.** As per the contents of the impugned FIR, land measuring 05 kanals 09 marlas 135 sq. ft. was under leasehold rights of Sh. Ghulab Singh, who expired on 12.10.2013. The said land was partitioned amongst his successors in the following manner:

(i) Smt. Raj Kour– 01 kanal 19 marlas 235 sq. ft.
(ii) Sh. Ripudaman Singh – 01 kanal 19 marlas 157 sq. ft.
(iii) Smt. Nischint Kour – 01 kanal 10 marlas 015 sq. ft.

It is alleged that Ripudaman Singh executed a Power of Attorney in favour of Bakshi Gh. Hussain, father of petitioner Mushtaq Ahmad Bakshi and father-in-law of petitioner Bilquis Bakshi, in respect of his share of the land, whereas Smt. Nischint Kour executed a Power of Attorney in respect of her share of the land in favour of petitioner Bilquis Bakshi. Both the petitioners applied for vesting of ownership rights in respect of their respective portions of the land vide two separate

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applications dated 02.07.2004. The Tehsildar Nazool, in his report dated 04.01.2005, recommended that the original lessees had violated the terms and conditions of the lease by sub-letting and, as such, the land be resumed and put to auction, which recommendation was agreed to by the Assistant Commissioner, Nazool. However, the land was not resumed.

**91.** On 05.06.2007, the applications of the petitioners, namely Mushtaq Ahmad Bakshi and Bilquis Bakshi, were placed before the Committee headed by petitioner Basharat Ahmad Dar, and a rate of Rs. 45 lakhs per kanal was fixed in respect of the share of land under the occupation of petitioner Bilquis Bakshi in terms of Rule 13-I (iii)(a) of the Rules. On 09.08.2007, another meeting was held under the chairmanship of Sh. Mehboob Iqbal, wherein a rate of Rs. 45 lakhs per kanal was fixed and the land falling to the share of Sh. Ripudaman Singh was vested in favour of Mushtaq Ahmad Bakshi in terms of Rule 13(I)(iii)(a) of the Rules. The mutation was attested in favour of petitioners Mushtaq Ahmad Bakshi and Bilquis Bakshi on 29.01.2008. It is alleged in the FIR that the lease in respect of the land in question was to expire in the year 2013 and, as such, it was not open to the Committee to confer ownership rights in respect of the said land in favour of petitioners Mushtaq Ahmad Bakshi and Bilquis Bakshi. Thus, offences under Sections 5(2) and 5(1)(d) of the PC Act and Section 120-B RPC are alleged to have been committed by the petitioners and other public servants.

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**92.** The Investigating Agency conducted investigation of the allegations made in the FIR and found that Ripudaman Singh had appointed the father of petitioner Mushtaq Ahmad Bakshi as his attorney on 14.09.1989. It was further revealed that Ripudaman Singh had received an amount of Rs.2,50,000/- from petitioner Mushtaq Bakshi in consideration of eventual transfer of leasehold rights in respect of land measuring 01 kanal 19 marlas 15 sq. ft., and he was to receive a further amount of Rs. 50,000/- after transfer of leasehold rights. It was also found that Ripudaman Singh submitted an application dated 26.10.1996 seeking cancellation of the General Power of Attorney dated 14.09.1989, which was cancelled by the Assistant Commissioner, Nazool, vide order dated 04.11.1996.It was further revealed that Smt. Nischint Kour had executed a General Power of Attorney dated 20.07.1989 in favour of petitioner Bilquis Bakshi. According to the prosecution, Smt. Nischint Kour had appointed petitioner Bilquis Bakshi only as a caretaker of her property.

**93.** It appears that the petitioner Mushtaq Ahmad Bakshi filed an application seeking transfer of leasehold rights in respect of land measuring 01 kanal 19 marlas falling to the share of Ripudaman Singh. In the application, he had submitted that the Divisional Commissioner had recommended transfer of the land on 03.12.1989, but the case has not been settled. The application, however, was not made under the Roshni Act, as in the year 1994 the Roshni Act was not in force. On 31.01.2007, the petitioner Mushtaq Ahmad Bakshi submitted an affidavit in which he declared that he was an occupant of the State land in question, without specifying as

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to how he had come into occupation of the land.Another application was submitted by the petitioner **Bilquis Bakshi** before the Assistant Commissioner, Nazool**,** seeking transfer of leasehold rights measuring 01 kanal 10 marlas 15 sq. ft**.** Petitioner Bilquis Bakshi also filed an affidavit dated 31.01.2007, declaring that she was an occupant of the State land in question, without mentioning any specific category and without specifying as to how she had come into occupation of the land.

**94.** The investigation further revealed that the field staff submitted a report stating therein that the Power of Attorney executed by Ripudaman Singh in favour of Gh. Hussain Bakshi was cancelled and that both Ripudaman Singh and Nischint Kour had violated the terms and conditions of the lease agreement by executing separate Power of Attorney in favour of Gh. Hussain Bakshi **and** Bilquis Bakshi, respectively, and recommended resumption of the land and its subsequent auction. It was also submitted in the report that a Chowkidar was found present on the spot, who informed that land measuring **01 kanal 10** marlas 15 sq. ft**.** was in possession of petitioner Bilquis Bakshi, and land measuring 01 kanal 19 marlas 197 sq. ft. was in possession of petitioner Mushtaq Bakshi**,** shown in Khaka Dasti as **A** and **B**, respectively. It was also reported that land measuring 01 kanal 09 marlas 145 sq. ft**.** was under the possession of Smt. Raj Kour**,** shown as **C** in the Khaka Dasti.

**95.** It is alleged that the land was not in verifiable possession of the petitioners Mushtaq Bakshi and Bilquis Bakshi. It is also stated in the chargesheet that the field staff comprising Patwari, Girdawar and Tehsildar submitted their status report dated 04.01.2005, wherein it was

reported that land measuring 05 kanals 09 marlas 135 sq. ft. **in** Khasra No. 1144 min, estate Narsingh Garh**,** was leased out to Ghulab Singh, which lease was renewed for a further period of 40 years w.e.f. 12.10.1973, and thereafter transferred in favour of Raj Kour, Ripudaman Singh and Nischint Kour as per the family settlement dated 16.08.1988, and partitioned among the legal heirs. Raj Kour was given 01 kanal 19 marlas 235 sq. ft**.**, Ripudaman Singh was given 01 kanal 19 marlas 157 sq. ft**.**, and Nischint Kour was given 01 kanal 10 marlas 15 sq. ft. The report further contained details regarding the execution of separate Power of Attorney by Nischint Kour and Ripudaman Singh in favour of petitioner Bilquis Bakshi and Gh. Hussain Bakshi**,** respectively. It was also reported that the land in respect of which Power of Attorney had been executed was bounded by a brick compound and that the remaining area of 01 kanal 19 marlas 245 sq. ft**.** was in possession of Raj Kour. The lease period was to expire on 12.10.2013**.** It was reported that Ripudaman Singh and Nischint Kour had violated the terms and conditions of the lease by subletting the land in question, and resumption of the land was recommended, which recommendation was agreed to by the Assistant Commissioner, Nazool**.**

**96.** It has been alleged that the requisite court fee of Rs. 10/- was not paid by the beneficiaries/petitioners and that their applications were not in Form No. 2. It is further alleged that petitioners Mushtaq Bakshi **and** Bilquis Bakshi**,** under a criminal conspiracy, submitted separate applications instead of a single application as a family, and that the Committee headed by petitioner Basharat Ahmad Dar, instead of considering both

the applications together, considered only the application of petitioner Bilquis Bakshi, while deferring the decision on the application of petitioner Mushtaq Ahmad Bakshi by sending it for examination by the Deputy Commissioner, Srinagar, without any reason. It has also been alleged that the second Committee headed by the then Divisional Commissioner Mehboob Iqbal thereafter considered the application of petitioner Mushtaq Ahmad Bakshi and passed an order vesting ownership of the other portion of the State land with a view to avoid allotment in favour of petitioners Mushtaq Bakshi and Bilquis Bakshi as a single family, which would have fetched more revenue in terms of the Rules of 2007.

**97.** The petitioners have challenged the impugned FIR and the challan emanating therefrom on the ground that all the provisions of the Roshni Act and the Rules framed thereunder were scrupulously followed while vesting ownership of the land in question in favour of petitioners Mushtaq Bakshi **and** Bilquis Bakshi. It has been contended that the rates have been adopted in respect of the land in question strictly in accordance with the Rules and the land use. It has further been contended that both the beneficiaries/petitioners qualify to be occupants within the meaning of **Section 2(e)** of the Roshni Act and were, therefore, eligible for vesting of ownership rights in respect of the land in question. It has also been contended that separate applications were submitted by the petitioners/beneficiaries because the portions of land which were in their occupation belonged to two different individuals who had surrendered possession of their respective portions in favour of

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the petitioners, and that the same was not done with a view to defeat any provision of law.

**98.** As already noted, the allegation levelled in the chargesheet is that the beneficiaries/petitioners do not qualify to be occupants within the meaning of **Section 2(e)** of the Roshni Act, as they were merely authorised representatives of the original lessees, therefore, ownership of the land in question, if at all, was required to be vested in the original lessees and not in favour of the petitioners/beneficiaries. In this regard, it is to be noted that original lessee **Ripudaman Singh** had executed a Power of Attorney dated 14.09.1989 in favour of the father of petitioner Mushtaq Bakshi, wherein it was clearly stated that the attorney would have full, effective, and adequate control over the property and would transfer the lease in favour of petitioner Mushtaq Bakshi. In the chargesheet, it has been observed that Ripudaman Singh had received Rs**.** 2,50,000**/-** from petitioner Mushtaq Bakshi and he was to receive a further amount of Rs. 50,000**/-** after transfer of leasehold rights in respect of portion of the land measuring 01 kanal 19 marlas 15 sq. ft**.** Thus, there is ample material on record to show that Ripudaman Singh had violated terms of the lease by surrendering possession of his portion of land in favour of petitioner Mushtaq Bakshi. Similarly, Nischint Kour had also executed a Power of Attorney dated 20.07.1989 in favour of petitioner Bilquis Bakshi, conferring full, effective, and adequate control over the property. The material on record, including reports of Revenue Officers referred to in the chargesheet, clearly establishes that petitioner Bilquis Bakshi had taken control and possession of the land pursuant to

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the said Power of Attorney. Thus, in this case also, the evidence suggests that Nischint Kour had violated the terms of the lease by surrendering possession of her share of the land in favour of Bilquis Bakshi.

**99.** Once it is shown that the original lessees had surrendered possession of their respective portions of leasehold State land in favour of petitioners Bilquis Bakshi and Mushtaq Bakshi, the land stands escheated to the State and the same qualifies to be "State land" within the meaning of Section 2(h) of the Roshni Act. Since there is ample evidence on record to suggest that the petitioners/beneficiaries have been in possession of the land since 1989, as such they qualify to be "occupants" within the meaning of Section 2(e) of the Roshni Act in their own right and not as authorised representatives of erstwhile lessees. They were, therefore, eligible to be conferred the rights of ownership in respect of the portions of land belonging to Nischint Kour and Ripudaman Singh**.** The assertion of the Investigating Agency that the petitioners were not eligible to be conferred the ownership rights in respect of the land in question, is, therefore, misconceived.

**100.** The contention of the Investigating Agency that the requisite formalities were not completed and, therefore, the Committee could not have vested ownership rights, is also without substance. Even if it is assumed that the petitioners/beneficiaries did not pay stamp duty amounting to a nominal sum of Rs.10, or that their application was not in the prescribed proforma, still then such trivial procedural irregularities do not constitute a blatant violation of the provisions of the Act or the Rules framed thereunder so as to attract criminal liability. The object of the Roshni Act

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was to confer ownership rights upon authorised/unauthorised occupants of State land. Once it is shown that the petitioners were in occupation of the State land before the cut-off date, merely because there is some procedural error in filling up the application form or there is an omission to pay stamp duty of Rs.10/-, the offence of criminal misconduct against the concerned public servants would not get attracted. Once the fundamental facts on the basis of which ownership could have been vested in favour of the petitioners/beneficiaries are established from the record, mere discrepancies in the application forms cannot form a ground for prosecuting those public servants who have dealt with the matter.

**101.** Another contention that has been raised by the respondent Investigating Agency for prosecuting the petitioners is that the beneficiaries/petitioners, Bilqis Bakshi and Mushtaq Bakshi, being wife and husband, should have been treated as a family, and ownership in respect of the land in question should have been vested in their favour as a family. In such an eventuality, the beneficiaries were obliged to deposit the amount at the enhanced rate for land beyond 02 kanals. It has been contended that, in the present case, total land measuring 03 kanals 09 marlas 170 sq. ft**.** has been vested in favour of the beneficiaries/petitioners, and if the allotment had been made by treating the petitioners/beneficiaries as one family, they were obliged to deposit the value of the land at the rate of 50% of the price fixed by the Committee from 03 kanals onwards. Thus, it is alleged that a loss has been caused to the State exchequer by treating the

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petitioners/beneficiaries as two different individuals and not as a single family.

**102.** In the above context, if we have a look at the facts of the present case, it has come to the fore that the total land which was leased out to Sh. Gulab Singh was 05 kanals 09 marlas 135 sq. ft**.** It is indicated in the chargesheet itself that the said land was partitioned after the death of Gulab Singh as per the family settlement, according to which 01 kanal 19 marlas 235 sq. ft**.** fell to the share of Raj Kour, the widow; 01 kanal 09 marlas 157 sq. ft. fell to the share of Ripudaman Singh, the son and the balance 01 kanal 10 marlas 15 sq. ft**.** fell to the share of Nischint Kour, the daughter. Thus, it is clear that there was a partition of the land belonging to the erstwhile lessee. Ripudaman Singh surrendered possession of his share of the land in favour of petitioner Mushtaq Bakshi, whereas Nischint Kour surrendered possession of her share measuring 01 kanal 10 marlas 15 sq. ft**.** in favour of petitioner Bilquis Bakshi. Smt. Raj Kour retained the portion of the land which fell to her share. In respect of two separate portions of land belonging to Ripudaman Singh and Nischint Kour, two different applications were made by the petitioners Bilquis Bakshi and Mushtaq Bakshi. These applications had to be decided separately by treating them as two different cases because it is not a case where, in respect of a single portion of the land belonging to a single person, two individuals belonging to the same family have made two separate applications for vesting of ownership in their favour. It is a case where two different individuals belonging to the same family have made two separate

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applications for vesting of ownership of two separate portions of land belonging to two different individuals. Thus, their applications had to be dealt with separately. The contention of the respondents, in these facts and circumstances, is wholly misconceived and deserves to be rejected.

**103.** For what has been discussed hereinbefore, the allegations made in the chargesheet and the material collected by the Investigating Agency against the petitioners do not disclose commission of any offence, much less an offence under Section 5(1)(d) read with Section 5(2) of the PC Act. Continuation of the prosecution against the petitioners in these circumstances would be nothing but an abuse of the process of law. Hence, the chargesheet deserves to be quashed**.**

**104.** Accordingly, both the aforesaid petitions are allowed and the impugned chargesheet as well as the proceedings emanating therefrom are quashed.

**105.** All the afore-titled eleven (11) petitions along with connected petitions are disposed of in the above terms. The original judgment be placed on record of the lead case CRM(M) No. 308/2024, and a copy thereof be placed on record of each of the other connected petitions.

**(SANJAY DHAR)**
**JUDGE**

**Srinagar**
30.01.2026.
Altaf Secy.

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**

Naresh Kumar
2026.01.15 02:26
I attest to the accuracy and
integrity of this document