HIGH COURT OF JAMMU &KASHMIR AND LADAKH AT JAMMU

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Whether the operative part or full judgment is pronounced: ***Full***

CRM(M) No.29/2022

PARDEEP SINGH & ORS.

...PETITIONER(S)

Through: - Mr. Abhinav Sharma, Sr. Advocate, with
Mr. Abhirash Sharma, Advocate
Mr. Asheesh Singh Kotwal, Advocate.

Vs.

UT OF J&K & ORS. **...RESPONDENT(S)**

Through: - Mr. Raman Sharma, AAG, with
Ms. Saliqa Sheikh, Advocate.
Mr. J. A. Hamal, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners, through the medium of present petition, have challenged the charge sheet emanating out of FIR No. 03 of 2014 for offences under Section 5(1)(d) read with Section 5(2) PC Act and Section 420, 467, 468, 471 and 120-B RPC registered with Vigilance Organization Jammu (now ACB), which is stated to be pending before the Court of Special Judge Anti-Corruption, Doda (hereinafter "the Trial Court").

2) As per the prosecution case, a complaint was lodged by predecessor-in-interest of private respondents with the

Vigilance Organization on 03.02.2011 alleging therein that land measuring 60 kanals and 16 marlas falling under Khasra No.2772/583 min, which was shown in revenue records since 1971 as government land, has been fraudulently mutated by the revenue authorities in the name of the petitioners on monetary considerations. It was alleged that the said land was coming within the alignment of Kishtwar-Chatroo-Sinthan Road and involved huge amount of compensation, which prompted the above action by the revenue authorities with a view to confer undue benefit upon the petitioners.

3) The respondent investigating agency proceeded to conduct a preliminary verification, during which it was found that the land in question was not State land, but it was 'Shamilat Deh' land, and the proprietary land owners of the village had proportionate share in the same. It was found that Shri Abdul Rashid Bhat, the then Tehsildar Kishtwar (expired), Abdul Qayoom, the then Girdawar Halqa Pouchal (retired), Shri Om Dutt, the then Patwari Halqa Pouchal (retired), Mohammad Iqbal Kichloo, the then Patwari Pouchal, and Abdul Aziz Tak, the then Patwari Pouchal, entered into criminal conspiracy with the petitioners by abusing their official position and made fraudulent entries in the revenue record exclusively in their favour in respect of

the portion of land falling under Khasra No.2772/583 of Village Pouchal, which was coming under alignment of Kishtwar-Sinthan Road. It was found that initially the status of the land was changed from 'Gair Mumkin Jarh' to 'Gora' in the year 2003, and subsequently mutations of the said land were attested in favour of the petitioners in the year 2010 by showing their possession over the same since the year 1971, even though petitioners Kuljeet Singh and Pradeep Singh were born in the years 1977 and 1964 respectively. Thus, FIR for offences under Section 5(1)(d) read with Section 5(2) of PC Act and Sections 420, 467, 468, 471, 120-B of RPC was registered and investigation was set into motion.

4) After investigation of the case, the aforesaid offences were found established against accused Mohammad Iqbal Kichloo, the then Girdawar Pouchal, accused Abdul Rashid, the then Tehsildar Kishtwar (expired), accused Om Dutt, the then Patwari Pouchal, accused Abdul Qayoom, the then Girdawari Pouchal (now retired), and the petitioners herein.

5) The petitioners have challenged the impugned charge sheet on the ground that the mutation order Nos.3614 and 3615, both dated 30.03.2010, which are subject matter of challan, were challenged by the private respondents before Additional Deputy Commissioner, Kishtwar, but the appeal

came to be dismissed by the appellate authority in terms of judgment dated 08.12.2021. According to the petitioners, once the basis of the charge sheet, which is the aforesaid mutation orders passed in their favour, has been knocked down by the appellate authority by upholding the said mutation orders, there is no logic in to prosecuting the petitioners. It has been contended that the appellate authority has come to the conclusion that Shamilat land under Khasra No.2772/583-min of Village Pouchal was in cultivating possession of the petitioners through their predecessor since the year 1971, and that in the year 1998, when they had attained majority, the entry in respect of land measuring 20 Kanals was made in their favour. It has been contended that even the private respondents do not deny the fact that the petitioners are holding proprietary land in Village Pouchal, and, as such, they are share-holders of the Shamilat Deh land. It has been submitted that the private respondents have neither any physical possession on spot nor any revenue entry in their favour in respect of the Shamilat land, as such, the petitioners have not taken away any of their rights.

6) It has further been submitted that as per the report of Tehsildar dated 11.11.2012 submitted to Vigilance Organization, petitioner No.1 has entitlement of 35 kanals

06 marlas of Shamilat land, petitioner No.2 has entitlement of 36 kanals 09 marlas of Shamilat land, and petitioner Nos. 3 to 7 have entitlement of 45 kanals and 15 marlas of Shamilat land. It has been further contended that Sehat-i-Kasht in respect of the land in question was made in the year 2003 in favour of the petitioners when not even the notification for acquisition of the land was issued and further, when the mutations in respect of the land were attested in favour of the petitioners, the land had not been acquired for construction of the road, as such, it cannot be stated that the petitioners had under a design got the mutations attested in their favour. It has been contended that registration of FIR and filing of challan against the petitioners in these circumstances is an abuse of process of law.

7) The official respondents, in their reply, have reiterated the allegations made in the charge sheet. However, no reply has been filed by the private respondents.

8) I have heard learned counsel for the parties and perused record of the case.

9) The main ground, on which petitioners are assailing the impugned charge sheet, is that the mutation orders, which are subject matter of the impugned challan, have been upheld by the appellate authority, thereby appending the

seal of approval upon the same. It has been contended that once the mutation orders have been upheld by the appellate authority, the very basis of the impugned criminal prosecution against the petitioners gets knocked down.

10) Learned Senior Counsel appearing for the private respondents and learned Senior AAG appearing for the official respondents have contended that the order passed by the appellate authority was challenged by the private respondents by way of an appeal before the Divisional Commissioner, Jammu, who, vide order dated 11.10.2025, has made adverse observations with regard to the order passed by the Additional Deputy Commissioner, Kishtwar, and it is for this reason that the petitioners proceeded to file a revision petition against the order of the Divisional Commissioner before the Court of Financial Commissioner, Jammu. It has further been contended that the learned Principal District Judge, Kishtwar, vide his judgment dated 05.10.2023 passed in a reference made by the Collector, Land Acquisition, at the behest of the private respondents, has clearly held that the mutation entries in favour of the petitioners are manipulated, and that the petitioners were never in exclusive possession of the portion of Shamilat land, regarding which mutations have been attested in their favour.

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11) It is pertinent to mention here that the judgment passed by the Reference Court has been challenged by the petitioners by way of appeal before this Court, and vide interim order dated 16.10.2023 passed by this Court in RFA No.40/2023, the judgment of the Principal District Judge, Kishtwar, has been stayed. The appeal is still pending before this Court.

12) It is not in dispute that the petitioners and the private respondents are estate holders of Village Pouchal, therefore, they have proportionate share in the Shamilat Deh land. According to the petitioners, they were in exclusive possession of the portion of Shamilat Deh land which has been mutated in their favour, whereas the same is being seriously disputed by the private respondents, who have vehemently contended that there has been no partition of the Shamilat Deh land and, therefore, mutation in respect of a specific portion of Shamilat Deh land, which has come under the alignment of road, could not have been attested in their favour. According to the respondents, this has been done by the revenue officers of the relevant time by misuse of their official position with a view to confer undue benefit upon the petitioners.

13) The order of the Additional Deputy Commissioner, whereby the mutation orders passed in favour of petitioners

have been upheld, was challenged by the private respondents by way of appeal before the Divisional Commissioner, who did not express any opinion on the merits of the case, but after noticing the facts, rendered an opinion that in view of pendency of the civil proceedings before the High Court, adjudication of merits of rival claims and validity of mutations in question cannot be conclusively decided, as final decision of the High Court would govern the core issue relating to respective rights of the parties. Merely because the petitioners have challenged the said order of the Divisional Commissioner by way of a revision petition before the Financial Commissioner does not change the fact that the Divisional Commissioner has not rendered any opinion on the merits of the order passed by the Additional Deputy Commissioner.

14) We have also before us the judgment passed by the Reference Court, according to which the mutations attested in favour of the petitioners are manipulated and that there was no partition of Shamilat Deh land between the petitioners and the private respondents. The said judgment of the Reference Court is under challenge before this Court in appeal and the same has been stayed.

15) From the narration of aforesaid facts, it becomes clear that validity and legality of the mutation orders, which

according to the investigating agency are manipulated and have been attested by the then revenue officers by misuse of their official position, is subject matter of determination before this Court and also before the revenue courts. The fact that one of the revenue authorities, Additional Deputy Commissioner, has proceeded to uphold the validity of the impugned mutation orders, and the fact that this Court has stayed the judgment of the Reference Court, goes on to show that regarding legality of attestation of mutations by the revenue officers in favour of petitioners different views have been expressed by various courts/authorities and a final word on the issue is still awaited.

16) In case every order passed by a revenue officer and every order passed by a judicial or quasi-judicial authority is viewed with suspicion and subjected to criminal prosecution, it would be difficult for the revenue officers and quasi-judicial or judicial authorities to function fearlessly. A statutory or a quasi-judicial authority is bound to make mistakes while passing orders, but every order passed by such authorities cannot be made subject matter of investigation, unless it is clearly shown that the orders of the statutory/quasi-judicial authority have been passed with a dishonest or mala fide intention, which can be gathered from the surrounding circumstances.

17) In the present case, Sehat-i-Kasht in respect of the land in question was made in favour of the petitioners in the year 2003, when the land in question was not even contemplated to be acquired. In fact, notification under Section 4 of the Land Acquisition Act in respect of the subject land came to be issued only on 03.12.2010. Even before that date, Sehat-i-Kasht had already been attested in favour of the petitioners. The mutations were also effected in favour of the petitioners on 30.03.2010, well before issuance of notification under Section 4 of the Land Revenue Act. Therefore, the inference drawn by the investigating agency that Sehat-i-Kasht and the mutations were attested in favour of the petitioners with a view to obtain compensation for acquisition of land is far-fetched, unless it is assumed that the petitioners had foresight that one day the said patch of land would be acquired.

18) Merely on the basis that some of the petitioners were minors in the year 1971, and while passing the order of Sehat-i-Kasht, it was observed by the revenue officer that they are in possession since the year 1971, it cannot be stated that a gross illegality has been committed by the revenue officer concerned. By recording that these petitioners were in possession since the year 1971. The relevant revenue officer intended to convey that the

petitioners and their predecessors were in possession of the land since the year 1971, which fact has been explained by the Additional Deputy Commissioner in his judgment, which is a possible and plausible view.

19) Thus, mere attestation of mutations by the revenue officers in favour of the petitioners would not by itself attract the provisions of Prevention of Corruption Act or any other penal provision. The material collected by the investigating agency during the course of investigation does not disclose allegation of acceptance of illegal gratification or other pecuniary advantage by the revenue officials from the petitioners nor there is any material on record to show that there was a prior meeting of minds between them for securing attestation of the mutations through abuse of official position. The foundation of the prosecution case is the mutations attested in favour of the petitioners. These mutation orders are amenable to scrutiny by the appellate/revisional authorities. Therefore, mere attestation of mutation orders, without there being any material to show that these orders have been attested with a dishonest intention, would not attract the provisions of Prevention of Corruption Act. If the logic of the investigating agency is accepted, then even the Additional Deputy Commissioner,

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who has upheld the mutation orders, becomes a co-conspirator, which would be a preposterous proposition.

20) In view of what has been discussed hereinbefore, it is clear that lodging of FIR and filing of charge sheet against the petitioners, in the facts and circumstances of the case, is nothing but an abuse of process of law. Therefore, the impugned FIR and the charge sheet emanating therefrom deserves to be quashed.

21) Accordingly, the petition is allowed and the impugned FIR and the charge sheet emanating therefrom as against the petitioners is quashed.

(Sanjay Dhar)
Judge

SRINAGAR
19.11.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**