

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

Reserved on: 28.04.2025
Pronounced on: 06.05.2025

CRM(M) No.106/2024

MOHAMMAD NAJEEB GONI

... PETITIONER(S)

*Through: - Mr. R. A. Jan, Sr. Advocate, with
Mr. Adil Mushtaq, Advocate.*

Vs.

UT OF J&K AND OTHERS

...RESPONDENT(S)

*Through: - Mr. Mohsin-ul-Showkat Qadiri, Sr. AAG, with
Ms. Maha Majeed, Advocate.*

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

JUDGMENT

1) The petitioner has challenged charge sheet arising out of FIR No.28/2018 for offences under Section 420, 447A and 120-B RPC and the proceedings emanating therefrom, which are stated to be pending before the Court of Judicial Magistrate, 1st Class, Tangmarg (hereinafter referred to as "the trial court"). Challenge has also been thrown to order dated 30.12.2023 passed by the trial court, whereby the prayer for release of passport in favour of the petitioner has been declined.

2) As per the impugned charge sheet, a complaint came to be received by the Crime Branch, Kashmir, from the inhabitants of Village Bangil Tangmarg, alleging therein that

the petitioner in connivance with land brokers, namely, Ghulam Mohammad Bhat, Mohammad Ashraf Wani and Mohammad Sultan Ganie, have trespassed and encroached upon the State land measuring approximately 25 kanals falling under Survey No.5444, 5447, 5449, 5490, 5452, 6460, 6439 and 5451 situated at Village Dhobiwan Kunzar. It was also alleged that the aforesaid accused persons have encroached upon the said land by erecting sign boards and stone blocks and converted the same into plots so that the same can be offered for sale to the interested persons. On the basis of these allegations, FIR No.28/2018 for offences under Section 420, 447-A and 120-B RPC came to be registered and investigation was set into motion

3) After investigation of the case, it was found that the petitioner and his relatives are in possession of approximately 56 kanals of land under Survey Nos.5440, 5441, 5442, 5443, 5446, 5448, 5453, 5458, 5459, 5489, 5491 and 5510 at Mouza Dhobiwan Tehsil Kunzar. It was also found that in the same vicinity, State land measuring approximately 24 kanals under Survey Nos.5438, 5439, 5444, 5447, 5449, 5450, 5452, 5460, 5490, 5411 and 5451, is scattered within the proprietary land of the petitioner. The investigation revealed that the petitioner, with intention to grab the scattered State land in connivance with co-accused

Ghulam Mohammad Bhat and Mohammad Ashraf Wani, encroached upon the State land and erected sign boards on the said land including the State land which was later on demolished by the revenue authorities after registration of the FIR.

4) The investigation further revealed that the petitioner had also executed a Power of Attorney in favour of co-accused Ghulam Mohammad Bhat with fraudulent and dishonest intention by incorporating even the survey numbers of the State land in the said Power of Attorney. In pursuance of the said Power of Attorney, co-accused Ghulam Mohammad Bhat had executed an agreement with one Basharat Ahmad Mir for sale of 63 kanals of land. It was found that said Basharat Ahmad Mir had paid an amount of Rs.15.00 lacs by way of cheque and an amount of Rs.40.00 lacs in cash in three instalments to the petitioner. It was further revealed that co-accused Ghulam Mohammad Bhat had executed a notarized sale agreement in favour of one Hilal Ahmad Teli on 07.08.2017 who had paid an amount of Rs.30.00 lacs. The Investigating Agency further found that total land which was in illegal occupation of the petitioner was 25 kanals and 01 marla, which stands retrieved by the revenue authorities.

5) After completion of investigation of the case, offences under Section 420, 447-A, 467, 468, 471 and 120-B RPC

CRM(M) No.106/2024

were found established against the petitioner and co-accused. However, approval was granted by the Crime Headquarters for producing challan against the petitioner only in respect of offences under Section 420, 447-A and 120-B RPC. Accordingly, the challan was laid before the learned trial court.

6) The petitioner has challenged the impugned challan on the grounds that after verification conducted by the team comprising of Crime Branch officials and revenue field staff, a comprehensive report dated 15.09.2018 was prepared and as per the said report, the State land was found vacant and the complaint against the petitioner was found to be baseless and in view of this finding, which is undisputed, it cannot be stated that the petitioner has encroached upon the State land. It has been further contended that the ingredients of offences under Section 420, 447-A and 120-B RPC are not fulfilled in the present case as there is no allegation against the petitioner that he has defrauded any person. It has been contended that once the State land, as per own admission of the Investigating Agency, stands retrieved, no case of criminal trespass can be lodged against the petitioner. It has been averred that in the year 2017, when the process for vesting of ownership rights in respect of the State land which was in possession of the petitioner,

was pending in terms of ROSHNI Act, the revenue authorities without following due process of law demolished the boundary wall erected around the proprietary land of the petitioner and took over forcible possession of the scattered State land within the proprietary land of the petitioner. It is being submitted that the aforesaid action of the authorities was challenged by the petitioner by way of a writ petition bearing OWP No.1776/2017, in which an order came to be passed on 07.11.2017 directing the parties to treat the writ petition as a representation on behalf of the petitioner and to accord consideration to the same within a period of four weeks and till then not to harass the petitioner by disturbing his possession. On these grounds, it is being urged that no offence of criminal trespass is made out against the petitioner.

7) During the pendency of this petition, the petitioner filed an application seeking a direction upon the Regional Passport Officer, Srinagar, as also the official respondents to facilitate re-issuance of passport in favour of the petitioner so that he is able to resume his employment in Kingdom of Saudi Arabia.

8) The respondent Investigating Agency has filed its status report, in which the allegations made in the charge sheet against the petitioner have been reiterated. It has been

contended that the investigation has clearly established that the petitioner in connivance with other accused persons has grabbed State land and also executed a Power of Attorney in which he knowingly incorporated survey numbers pertaining to the State land and thereafter proceeded to sell the State land to gullible persons, in lieu whereof he grabbed huge amount of money.

9) I have heard learned counsel for the parties and perused record of the case. I have also gone through the trial court record.

10) The star ground of the petitioner for assailing the impugned charge sheet is that the respondent Investigating Agency has itself admitted that the State land, which was in possession of the petitioner, has been retrieved even before the filing of charge sheet and, therefore, no offence of criminal trespass is made out against the petitioner. In this regard, heavy reliance has been placed by learned Senior Counsel, appearing on behalf of the petitioner, on report dated 15.09.2018 submitted by Tehsildar, Kunzar, to Deputy Commissioner, Baramulla, with regard to the complaint relating to demolition of construction raised in Abi Awal land situated at Dhobiwan Tehsil Kunzar. In the said report, it has been recorded that no encroachment has been made by any person after its eviction in October, 2017. It

has been also recorded in the said report that the matter pertaining to the complaint that the petitioner has sold State land, upon its verification, was found to be baseless. In the said report it is further recorded that even the complainants did not support the allegations made in the complaint.

11) The question that falls for determination of this Court is as to whether the offence of criminal trespass gets obliterated once the possession of the State land is recovered from the illegal occupants. The answer to this question has to be in 'negative', because the moment a person illegally occupies the State land with a view to insult or annoy any person in possession of such property or with an intent to commit an offence, the offence under Section 447-A RPC is complete. An illegal occupier may be evicted later on but that does not mean that no offence has been committed by the said person. The argument of learned Senior Counsel appearing for the petitioner is, therefore, without any substance.

12) So far as the material collected by the Investigating Agency in support of their allegation that the petitioner had occupied the State land, is concerned, it is clear from a perusal of the trial court record, particularly the revenue extracts, that the petitioner is shown to be in illegal occupation of State land comprised in survey Nos.5444,

5447, 5449, 5450, 5452, 5490 and 5511. Incidentally even in Power of Attorney dated 30th December, 2016, executed by the petitioner in favour of co-accused Ghulam Mohammad Bhat, besides the khasra numbers of proprietary land of the petitioner, the aforesaid khasra numbers pertaining to State land are also mentioned. Vide the said Power of Attorney, the petitioner has authorized his agent, co-accused Ghulam Mohammad Bhat, to sign sale deed, gift deed and to act or do anything with regard to aforementioned property, meaning thereby that the petitioner, by virtue of the aforesaid Power of Attorney, intended to sell even the State land which was under his occupation.

13) There is also material on record to show that money has exchanged hands between the Attorney Holder of the petitioner and some gullible buyers, which clearly goes on to show that the petitioner had a fraudulent intention of dealing in the State land for the purpose of its sale. Thus, the ingredients of offence under Section 420 RPC are also fulfilled.

14) There is overwhelming material on record, that has been collected by the Investigating Agency during the investigation of the case, to support the charge for offence under Section 420, 447-A RPC against the petitioner and it

is for this reason only that the learned trial court has, vide order dated 25.03.2024, framed charges for offences under Section 420, 447-A and 120-B RPC against the petitioner, which order has not been put to challenge by the petitioner in the present case.

15) Apart from the above, there is yet another aspect of the matter which is required to be noticed and which disentitles the petitioner to claim the relief sought in the present petition. Admittedly, the petitioner had invoked jurisdiction of this Court under Section 482 of Cr. P. C for challenging the FIR out of which the impugned challan has arisen. The said petition bearing CRM(M) No.227/2023 has been dismissed on merits by this Court in terms of order dated 01.09.2023. A perusal of the said order would reveal that at the relevant time, investigation of the case was almost complete and this Court had taken into consideration all the material that was collected by the Investigating Agency during investigation of the case. In fact, this Court had also taken into account report of Tehsildar, Kunzar, dated 15.09.2018, whereafter it was specifically observed by the court that the land, if occupied by the petitioner, has been retrieved does not absolve him of his alleged illegal action of encroaching it.

16) In the face of the fact that almost all the grounds that have been urged by the petitioner in the present petition

have been considered by this Court in the earlier round of litigation, it was not open to the petitioner to challenge the impugned challan by filing another petition. It appears to be a case of abuse of process of the Court which needs to be deprecated.

17) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. It shall, however, be open to the petitioner to approach the trial court for grant of NOC in his favour for the purpose of issuance/renewal of his passport.

18) The original record summoned from the trial court be returned forthwith.

Srinagar,
06.05.2025
"Bhat Altaf-Secy"



(Sanjay Dhar)
Judge

Whether the order is reportable: Yes/No