

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT JAMMU**

CRM(M) No. 361/2024

**Reserved on 26.11.2024.
Pronounced on:06.12.2024**

Kiran Wattal

...petitioners

Through: -Mr. Pranav Kohli Sr. Advocate
with Mr. Aftab Malik Advocate &
Mr. Rajat Watal Advocate

Vs.

UT of Jammu and Kashmir and another

...respondents

Through: - Ms. Monika Kohli Sr. AAG
with Ms. Aparna Gupta Advocate

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

JUDGMENT

1. The petitioner has challenged order dated 14.10.2023 passed by the learned Special Judge, Anti-Corruption, Jammu ('trial Court' for short) whereby charges for offences under Section 5(1)(d) read with Section 5(2) of J&K Prevention of Corruption Act ('PC Act' for short) and Section 120-B RPC have been framed against him.

2. As per the charge-sheet which has emanated from FIR No.12/2019 for offences under Section 5(1)(d) read with Section 5(2) of PC Act and Section 120-B RPC registered with Police Station, Anti Corruption Bureau, Jammu, an application for issuance of building permission came to be filed by the applicants Kuldeep Kumar and

Pardeep Kumar before the Municipal Corporation, Jammu. The same was sent to different agencies for obtaining No Objection Certificates which were required prior to accord of such permission. It is alleged in the charge sheet that Assistant Commissioner, Nazool refused issuance of NOC on the ground that the land on which the building was proposed to be erected is State land recorded in the possession of Mandir Sh. Raghunath Ji and as per Ailan No. 35 promulgated by the Maharaja, such type of lands cannot be subject matter of sale/lease. The Town Planning Organization had also refused the NOC on the ground that the matter needed to be referred to the Urban Transport Environment Improvement Committee (UTEIC). Besides this, Assistant Commissioner, Revenue had denied the NOC as the title of the land was not clear.

3. It is also stated in the charge sheet that a lease deed was executed in respect of the land in question which is situated at Gummat Jammu by Mandir Sh. Raghunath Ji Maharaj through Vijay Kumar and others as lessors, in favour of Kuldeep and Pardeep Kumar, the beneficiaries as lessees, but no khasra number of the land was mentioned in the said lease deed, nor any revenue record was annexed to it.

4. During the investigation relating to the procedures to be adopted in such type of cases by the JMC, it was found that the building permission cases were to be cleared in the meeting of the Building Operations Controlling Authority (BOCA), but in the instant case, the

building permission was granted by the Commissioner, Jammu Municipal Corporation, Jammu, the petitioner herein on the recommendations made by the Senior Town Planner, the co-accused without referring the case to BOCA. It is being alleged that the Senior Town Planner had recommended the case despite there being observations raised by the different agencies. This was done with a view to confer undue benefit upon the beneficiaries/co-accused. It has been alleged that while recommending the building permission case, the Senior Town Planner did not highlight the objections raised by the Assistant Commissioner, Revenue and the Assistant Commissioner, Nazool as also the Town Planning Wing.

5. The Investigating Agency, however, during the course of investigation sought clarification from JMC and it was found that no meeting of the BOCA had taken place between September 2012 to November 2015 and that only the building permission cases of commercial and institutional buildings with more than 20,000 square feet floor area were required to be forwarded to UTIEC.

6. After completion of investigation, the investigating agency concluded that the petitioner herein, in his capacity as Commissioner Municipal Corporation, Jammu, in furtherance of a criminal conspiracy hatched with the Senior Town Planner, co-accused Farzana Nakshbandi, and the beneficiaries Pardeep Kumar and Kuldeep Kumar, approved the building permission/plan by misusing and abusing his

official position in favour of the beneficiaries, despite the fact that there were no NOCs issued by the Assistant Commissioner, Revenue and the Assistant Commissioner, Nazool. It was also found that the petitioner had approved the building permission case intentionally and deliberately by ignoring the objections raised by the Revenue Authorities, that too, on his last day of posting as Commissioner, Municipal Corporation, merely to facilitate the beneficiaries. The other allegations regarding accord of building permission without reference to BOCA and UTIEC, have not been included in the conclusion drawn by the investigating agency because of the clarification given by the Jammu Municipal Corporation in this regard which has been referred to in the preceding para. It was concluded by the investigating agency that the illegal approval of building permission by the petitioner amounted to abuse of his official position and it facilitated the beneficiaries to construct a multistoried complex in the heart of the city. Thus, according to the prosecution, the petitioner/accused has committed offences under Section 5(1)(d) and Section 5(2) of PC Act and Section 120-B RPC.

7. The learned trial Court, after analyzing the material annexed with the chargesheet and, after hearing the parties, passed a detailed order dated 14.10.2023 whereby the petitioner has been charged for the aforesaid offences. While doing so, the learned trial Court has found that the petitioner has approved the building permission of the beneficiaries without referring the matter to UTIEC which was

mandatory as it was a case of approving the building plan in respect of a commercial building. It has also been concluded by the trial Court that there is material on record to show that the petitioner had approved the building permission of the beneficiaries despite there being objections from the Assistant Commissioner, Revenue and Assistant Commissioner, Nazool as regards the title of the beneficiaries to the land on which the building was proposed to be raised.

8. The petitioner has challenged the impugned order on the ground that the beneficiaries were having a clear title to the land on which the building was sought to be erected, inasmuch as, they were lessees of the land in question by virtue of two perpetual lease deeds executed by the duly authorized persons of Temple Sh. Raghunath Ji in their favour and, according to the petitioner, a lessee is entitled to raise construction on the land demised to him and the Municipal Corporation cannot refuse building permission in favour of a lessee on the ground that he is not the actual owner of the land in question. It has been contended that, in the instant case, there was no need to send the building permission case of the beneficiaries to BOCA, as in terms of Administrative Department communication dated 12.07.2012 for ease of doing business, the online permissions were issued to the applicants for hassle free service and the meetings of BOCA were discontinued from September, 2012 to November, 2015. It has been further contended that, in the present case, the building permission was given for mixed land use i.e. residential-cum-commercial structure, as such, there was

no need to refer the matter to UTEIC and even otherwise, in the present case, the permission was granted for residential cum commercial (mixed) building for an area which was less than 4000 square feet and it is only in cases where the total permissible floor area is more than 20,000 square feet that reference of building permission case to UTEIC is mandatory.

9. I have heard learned counsel for the parties and perused the record including the trial Court record.

10. Before dealing with the contentions raised by the petitioner in the present case, it would be necessary to understand the legal position as regards the scope of power of a Court while considering a case for charge/discharge of an accused.

11. In **Union of India vs. Prafulla Kumar Samal and another, (1979) 3 SCC 4**, the Supreme Court while considering the ambit and scope of a Special Judge's power to pass an order of discharge under Section 227 of the CrPC, analyzed its previous judgments on the issue and laid down the following principles:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) *Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.*

(3) *The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.*

(4) *That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial”.*

12. The aforesaid ratio laid down by the Supreme Court was reiterated and reaffirmed by it in the case of **Dilawar Balu Kurane vs. State of Maharashtra, (2002) 2 SCC 135** and it was clarified that in exercising jurisdiction under Section 227 of the Cr.PC, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but he has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the *pros and cons* of the matter and weigh the evidence as if he was conducting a trial.

13. Again, in the case of **Sajjan Kumar vs. CBI (2010) 9 SCC 368**, the Supreme Court, after analyzing its previous precedents on the issue, laid down the following principles regarding the scope of Sections 227 and 228 of the CrPC, which is in *pari materia* with Section 251A(1) of J&K CrPC which is applicable to the present case:-

“21On consideration of the authorities about the scope of [Section 227](#) and [228](#) of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under [Section 227](#) of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal”.

14. The Supreme Court, in the case of **Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey and others**, 2022 LiveLaw (SC) 631, after noticing the aforesaid position of law, has held that the trial Court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. It has been observed by the Supreme Court in the said case that the material which is required to be evaluated by the Court at the time of framing of charge should be the material which is produced and relied upon by the prosecution and sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. It was further observed that all that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice.

15. In **Shashikant Sharma and ors vs. State of Uttar Pradesh and another, 2023 LiveLaw (SC) 1037**, the Supreme Court has held that at the stage of framing of charges, if, from the admitted evidence of the prosecution as reflected in the documents by the I.O in the report under Section 173 CrPC, the necessary ingredients of an offence are not made out, then the Court is not obligated to frame charge for such offence against the accused.

16. From the foregoing analysis of law on the subject, it is clear that at the time of framing of charge, the Court has only to consider the material available for framing an opinion as to whether, *prima facie*, offence is committed which would require the accused to be put on trial. It is open to the Court, at the stage of framing of charge, to ascertain as to whether the allegations made in the charge sheet against the accused are supported by the material collected by the I.O during investigation of the case.

17. With the aforesaid legal position in mind, let us now advert to the facts of this case. As already noticed, the only allegation against the petitioner, as is clear from the conclusion arrived at by the Investigating Agency, is that, while according sanction to the building permission of the beneficiaries/co-accused, the petitioner, in his capacity as Commissioner, Municipal Corporation, overlooked the objections of the Revenue Authorities i.e. Assistant Commissioner, Revenue and the Assistant Commissioner, Nazool who, in their reports, had submitted

that the lease deeds in favour of the beneficiaries was doubtful as the same were not containing the khasra number of the land in question and secondly, the same were containing insertions. It was also observed by the Revenue Authorities that the lease in respect of the land in question could not have been made in favour of the beneficiaries because there is a prohibition upon lease of a land belonging to Temples in terms of Ailan No. 35 dated 4th Katak 1977, Svt. promulgated by the Maharaja.

18. In the above context, if we have a look at the lease deeds which are part of the challan, it is revealed that the first lease deed has been registered by the Sub-Registrar on 26.09.1986. It is executed by Temple Rani Sahiba Billoria through Vijay Kumar and others in favour of the beneficiaries, Pardeep Kumar and Kuldeep Kumar for a period of 90 years, beginning from 01.09.1986. In the said lease deed, although no khasra number is mentioned, yet the specifications, measurements and the location of the plot of land, is clearly reflected for its proper identification. The description of the surroundings of the plot is also specified in the said lease deed, and it is accompanied by site plan which clearly depicts the location and dimensions of the land in question. The second lease deed is dated 25.09.1986. It is also registered with Sub Registrar and the term of lease is 90 years from 01.09.1986. This lease deed has been executed by Temple Rani Sahiba Billoria through Vijay Kumar and others in favour of Shanti Parkash, the father of the beneficiates. In the aforesaid lease deed, not only the details of the surroundings of the plot are mentioned, but its dimensions

are also specified, and it is accompanied by site plan that clearly identifies the land in question. The challan also contains a copy of judgment/decreed dated 15.04.2013, passed by learned Munsiff Jammu, in a suit filed by the beneficiaries seeking a declaration to the effect that they are the legal heirs of late Shanti Parkash, entitled to inherit the leasehold rights in respect of the plot of land that was leased out in favour of their father. In the said judgment, the specifications and location of the plot are mentioned.

19. In the face of aforesaid material on record, the allegation of the prosecution, that the specifications of the land were not available to the revenue authorities while considering the NOC of the beneficiaries, is without any substance. It is pertinent to mention here that, before the Municipal Corporation, at the time of considering the building permission case of the beneficiaries, not only the lease deeds, but the judgment/decreed of the civil Court was also available, as is clear from the file index, which is part of the challan.

20. In the challan, there is a report dated 12.04.2014 of the Patwari concerned, which indicates that the land, in respect of which the site plan is annexed to the application for building permission has been, leased out to Kuldeep Kumar and Pardeep Kumar, sons of Shanti Parkash, by a registered lease deed. It is also reported by the Patwari that there is another lease deed registered in the name of father of the beneficiaries, in regard to the leased-out plot and there is a decree of a

civil Court whereby the beneficiaries have inherited the leasehold rights from their deceased father. The Patwari has even mentioned the khasra number (275) of the land. He has reported that the land under the said khasra number is under the occupation of Sh. Raghunathji Maharaaj and is Temple land which is commercial in nature. The said report has been confirmed by the Naib Tehsildar concerned and Tehsildar concerned and finally, by the Assistant Commissioner, Revenue.

21. From the above material on record which is part of the chargesheet, it is clear that it is not a case where the land on which the building was sought to be erected, is not identifiable. The land in question is clearly identifiable, not only from the covenants of the two lease deeds and the site plans annexed thereto, but also from the report of the the Patwari concerned, who has in his report dated 12.04.2014 confirmed the authenticity of the two leases deeds and he has even mentioned the khasra number of the land in question. Merely because, no khasra number is mentioned in the two lease deeds or that there are certain corrections which are duly attested, it cannot be stated that two lease deeds could not have been acted upon by the petitioner while considering the building permission of the beneficiaries.

22. As per Regulation (8) of the J&K Control of Building Regulations 1998, a lease deed is taken to be a sufficient proof of ownership of the land and similarly, a decree of legal heir passed by a Court of law is also taken to be a sufficient proof of ownership of land

for the purpose of grant of building permission. In the present case, the material on record annexed to the chargesheet clearly shows that the beneficiaries were in possession of perpetual lease deeds and a decree of legal heir passed by the civil Court in their favour in respect of the land on which the building was sought to be erected. These documents form a sufficient proof of ownership of the beneficiaries in terms of Regulation 8 of COBA Regulations, as such, the same could not have been ignored by the petitioner while considering the building permission case of the beneficiaries.

23. Another contention, on which much emphasis has been laid by the learned counsel appearing for the respondents is that even if it is assumed that the beneficiaries had the leasehold rights in respect of the land in question, still then, the lease deeds in their favour could not have been acted upon as the same were executed by the Management of Raghunath Ji Temple in violation of Ailan No.35 (supra) and this aspect of the matter had been highlighted by the Assistant Commissioner, Nazool in his report and, once, leasehold rights obtained by the beneficiaries were in contravention of the law and no NOC was issued in their favour by the Assistant Commissioner, Nazool, it was not open to the petitioner to accord permission to the erection of the building on the land in question.

24. It is true that the Assistant Commissioner, Nazool, in his report, on the application of the beneficiaries, has recorded that the land in

question is State land under the occupation of Mandir Sh. Raghunath Ji Maharaj and because it is State land belonging to a Temple, as such, in terms of Ailan No. 35, it is not subject to sale lease etc. Although, the Assistant Commissioner, Revenue, in his report, which is part of the challan, has recorded that his “office is constrained to issue NOC”, meaning thereby that he has issued the NOC, but it seems to be a case of clerical error and the concerned officer actually meant that NOC cannot be granted because as per the Ailan No. 35, the land in question cannot be the subject matter of sale/lease.

25. In the above context, we have to go to the contents of Ailan No. 35 promulgated by the Maharaja which is also part of the challan. As per the Ailan aforesaid, the Maharaja, while taking serious note of the mortgage of some shops by the Pujari of the Temple Chaturbuj located at Samba, had issued a direction to redeem the said mortgage immediately and issued a further direction that there shall be a prohibition on the mortgage and sale (Rehan and Bye) of temple properties. There is no mention of a prohibition on the lease of temple properties in the said Ailan. The object of issuing the said Ailan was to save the temples properties from permanent alienation, by way their sale or mortgage. In the case of lease of a property, there cannot be any permanent alienation as the ownership does not change. The Maharaja intentionally did not mention the word ‘Patta’ (lease) in the said Ailan, as the same would have deprived temples from earning income out of the properties held by them. Therefore, by no stretch reasoning, it can

be presumed that the aforesaid Ailan promulgated by the Maharaja would include prohibition on lease of the Mandir property as well. This simple and clear distinction has not been appreciated by the Assistant Commissioner, Nazool while submitting his report as also by the trial Court while passing the impugned order. Once, there was no prohibition in leasing out of the property in question by the Temple in favour of the beneficiaries or their father, it cannot be stated that the beneficiaries were not having a clear title to the property in question. It is pertinent to mention here that the land in question was allotted to the Temple by the Maharaja, as such, the Temple was well within its rights to lease it out to the beneficiaries and their father.

26. The petitioner by acting upon the documents produced by the beneficiaries, who were the lessees of the land in question, coupled with the report of the revenue authorities i.e. Assistant Commissioner, Revenue, has arrived at right conclusion that there was a clear title in favour of the beneficiaries and, accordingly, building permission was to be granted in their favour. The learned trial Court, while framing charge against the petitioner, has simply parroted the version of the prosecution without applying his mind to the material on record which he was supposed to do in view of the legal position discussed hereinbefore.

27. The other ground on the basis of which the learned trial Court has framed the charge against the petitioner is that, in the instant case,

the building permission application of the beneficiaries was not referred to the UTEIC before granting the permission. Even though the aforesaid allegation forms part of the investigation, yet while concluding the chargesheet, the investigating officer has not pressed the said allegation against the petitioner. Obviously, because UTEIC clearance was necessary only in the case of commercial buildings with a total floor area of more than 20,000 square feet, but in the instant case, the total floor area of proposed building was around 4,000 square feet only. The Id. trial Court has, while dealing with this aspect of the matter, ignored the fact the Investigating Agency has not, after investigation, found the material to substantiate the aforesaid allegation and concluded that UTIEC clearance was necessary, as the clarification regarding total floor area had come into force after the building permission in question was considered by the petitioner.

28. In the above context, it is to be noted that, in terms of Government Order No. 190-HUD of 2001 dated 14.08.2001, the Government of J&K constituted a Committee comprising Divisional Commissioner, Inspector General of Police, Inspector General of Traffic, VC SDA/JDA, Administrator, Municipality Jammu/Srinagar, Superintending Engineer R&B Srinagar/Jammu and Chief Town Planner Jammu/Srinagar for safeguarding the urban environment. In the said order, it was provided that the Committee shall examine the cases relating to permission for construction of traffic generating buildings such as Cinema Houses, hotels, office complexes, commercial houses,

shopping complexes etc., proposed to be constructed near or in the vicinity of main roads or on roads having high density of traffic. This order was clarified in the BOCA meeting dated 14.12.2015 and it was decided that all the commercial and institutional building permission cases shall be forwarded to UTIEC for clearance having a total floor area of more than 20000 sq. ft.

29. In the present case, the building permission is in respect of mixed use i.e. commercial cum residential. Therefore, even as per the Government order dated 14.08.2001 (supra), the building permission case of the beneficiaries was not required to be referred to UTIEC for clearance, as not only the area sought to be constructed was much less than the area that was mandated to be referred to UTIEC in terms of the decision of the BOCA but the building proposed to be erected was commercial cum residential and not purely commercial in nature. There is also material on record to show that no meetings of the BOCA had taken place during the relevant period and the building permissions during this period were granted to the applicants by the Commissioner, Municipal Corporation, for hassle free service. It is for this reason, that the Investigating Agency did not press the allegation regarding non-reference of building permission case of the beneficiaries to BOCA or the non-reference of the instant case to UTEIC. These aspects of the matter have been glossed over by the trial Court while framing charges against the petitioner.

30. For the foregoing discussion, it is clear that the material collected by the Investigating Agency during investigation of the case, does not substantiate the allegation of the prosecution that the beneficiaries were having a defective title to the land on which the building was sought to be erected and that the petitioner, while according permission to the beneficiaries to raise construction on the land in question, has ignored this aspect of the matter despite the objections of the revenue authorities. Once, it is found that the allegations in the chargesheet against the petitioner are not substantiated by the material collected by the Investigating Agency, the charge laid against the petitioner is rendered groundless and he is entitled to be discharged. The impugned order passed by the trial Court is, therefore, unsustainable in law and deserves to be set aside.

31. For the foregoing reasons, the petition is allowed and the impugned order passed by the trial Court against the petitioner is set aside and the petitioner is discharged. Consequently, the chargesheet as against the petitioner shall stand dismissed.

32. The trial Court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

Jammu
06.12.2024
“Sanjeev,”

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