
(2022) 04 J&K CK 0072

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Cases (M) No. 108 Of 2020

Aijaz Ahmad Bhat

APPELLANT

Vs

Ut Of J&K And Another

RESPONDENT

Date of Decision : 28-04-2022

Acts Referred:

Prevention Of Corruption Act, 2006 — Section 4, 5(1)(d), 5(2)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2022) 04 J&K CK 0072

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Y. Bhat, Fuqan Yakub, Asifa Padroo

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioner has challenged the charge sheet emanating from FIR No.19/2008 for offences under Section 5(1)(d) read with 5(2) of the J&K Prevention of Corruption Act and Section 120-B RPC registered with Police Station, Vigilance Organization, Kashmir, which is pending before the Court of Special Judge, Anticorruption (1st Additional Sessions Judge), Baramulla.

2) Before coming to the grounds of challenge, it would be apt to refer to the allegations made in the charge sheet.

3) The case of the prosecution, in brief, is that the petitioner, who happened to be the Managing Director of State Forest Corporation, in and around April-May, 2007, under a well-knit conspiracy in league with other officials/contractors, manipulated the records fraudulently, deceitfully and illegally and got approval for allotment of extraction and transportation of 2.79 lac cubic feet standing timber to proxy contractors of one blacklisted contractor, namely, Mohammad Yousuf Wani. It is alleged that the allotment was made to seven relatives of the

aforesaid blacklisted contractor including his three sons through a pick and choose method despite availability of a number of other registered poor/petty contractors falling under Amani category. It is further alleged that the petitioner by abusing his official position dishonestly entertained applications of as many as three contractors who did not even possess the registration certificates which is a pre-requisite for allotment of such works. It is also alleged that the conspiracy started when in the 59th meeting of Board of Directors of State Forest Corporation held on 6th April, 2007, domicile restriction for choosing 'Amani' from around the forest area where the timber was to be extracted, was waived off and the quota was increased from 20,000 cubic feet to 40,000 cubic feet. The charge sheet goes on to allege that these amendments were made at the instance of the petitioner who was Managing Director of the Corporation at the relevant time so as to favour blacklisted contractor, Shri Mohammad Yousuf Wani, by making allotment of extraction and transportation of timber to his proxies.

4) During the investigation, the investigating agency found that three persons, namely, Abdul Satar Lone, Mohammad Sharief Kalas and Mushtaq Ahmad Dar, had made applications before the then Forest Minister for allotment of works of extraction of timber from forest compartment No.7(b) Baramulla. These applications were endorsed to the petitioners for accommodating the said applicants under the Board norms. On the same date i.e., on 27.04.2007, the petitioner prepared a proposal for making the allotment of works from the aforesaid forest compartment in favour of aforementioned three applicants and four other persons, namely, Bilal Ahmad Wani (co-accused), Naseer Ahmad Wani, Suhail Ahmad Wani, who happen to be the sons of blacklisted contractor Mohammad Yousuf Wani and one of his close relatives, namely, Mohammad Syed Wani. Thus, the petitioner is alleged to have recommended allotment of works to all the above named seven applicants despite having knowledge that the applicants were not domiciles and could not be allotted the contract under Board norms. This, according to the investigating agency, was done by the petitioner with a criminal intent to confer undue benefit upon himself and these beneficiaries. It is alleged that the applications of aforementioned four persons were received directly by the petitioner and not even a report was sought by him from his subordinates regarding eligibility of these applicants and availability of timber from compartment No.7(b) Baramulla.

5) It is the case of the prosecution that the decision to waive off domicile restriction for choosing Amanies and to increase the quota of Amanies from 20,000 cft to 40,000 cft was made on the basis of a proposal made by the petitioner at the instance of co-accused Bilal Ahmad Wani and that the said decision of the Board could have been implemented only after the minutes of 59th Board meeting were confirmed by the Board in its 60th meeting held on 27.02.2008. Thus, according to the prosecution, as on the date of allotment of extraction works to co-accused Bilal Ahmad Wani and his proxies, the decisions taken in 59th Board meeting as regards waiver of domicile restriction could not

have been implemented.

6) Yet another allegation made in the charge sheet against the petitioner is that as many as four allottees were not registered contractors with the Corporation, which is obligatory in terms of Section 4 of the Registration of Contractors and their Conduct Regulations. These include Suhail Ahmad Wani, Naseer Ahmad Wani, Mohammad Syed Wani and Mushtaq Ahmad Dar, to whom allotments were made. It is also alleged that the co-accused Abdul Gani Hajam, the then General Manager, State Forest Corporation, issued a notice on 23.04.2007, whereby various forest compartments of the State Forest Corporation Circle North, Sopore, were put to tenders. These included forest compartment No.7(b) Baramulla, which figured at serial No.1 of the tender notice. However, a corrigendum was issued vide No.191/GMN/SFC/S dated 24.04.2007, whereby work relating to transportation and extraction pertaining to compartment No.7(b) was deleted from the tender notice. This, according to the prosecution, was done under a conspiracy, whereafter communication No.SFC/GMB/07-08/356 dated 08.05.2007 was issued by the General Manager to Divisional Manager, Baramulla, directing him to issue the work orders. The General Manager, in his capacity of holding additional charge of the Divisional Manager, issued allotment orders to the applicants. It is further alleged that the co-accused Abdul Gani Hajam dishonestly recommended the rate of Rs.55.06 per cft for extraction/transportation as against the rate of Rs.32.90 per cft prevailing at the relevant time. Thus, according to the prosecution, a pecuniary benefit of Rs.22.70 per cft was bestowed upon the beneficiary. It was found that the beneficiary had transported 41696 cfts and, as such, on the basis of rate difference, a loss in the amount of Rs.9,23,983.36/ was caused to the State exchequer.

7) It was also found that as many as seven applications were written by co-accused Bilal Ahmad Wani on behalf of his proxies and the report of the FSL reflected that all these applications were written and signed by co-accused Bilal Ahmad Wani. It is alleged that the allotment of extraction and transportation of timber was made by the petitioner and co-accused Abdul Gani Hajam to ineligible mates on pick and choose basis on exorbitant rates without inviting tenders. Thus, offences under Section 5(1)(d) read with Section 5(2) of the J&K Prevention of Corruption Act and Section 120-B RPC are stated to have been established against the petitioner and co-accused Abdul Gani Hajam, the then General Manager State Forest Corporation, and Bilal Ahmad Wani, contractor/mate.

8) The charge sheet has already been laid before the learned Special Judge and it appears from the status report submitted by the learned Special Judge that charges against the co-accused have already been framed and some of the prosecution witnesses have also been examined. It also appears that charge sheet was filed in the absence of the petitioner as he could not be traced and he was declared as proclaimed offender, whereafter he appeared before the learned Special Judge but charges against him are yet to be framed. It also appears from

the status report of the learned Special Judge that though the petitioner has participated in the proceedings and has even cross-examined some of the prosecution witnesses, yet the fact remains that charges are yet to be framed against him.

9) The grounds urged by the petitioner challenging the impugned charge sheet are that once in the 59th Board meeting of State Forest Corporation. the Board of Directors decided to waive off the domicile restriction with regard to extraction of timber earmarked for the Amani quota, the decision had to be implemented with effect from the date of the resolution adopted by the Board of Directors and not from the date the minutes of 59th Board meeting were confirmed in 60th meeting of the Board. On this ground, it is urged that the very basis of the prosecution case crumbles and, as such, no offence is disclosed against the petitioner. It has been also contended that if the prosecution story that the petitioner had manipulated the decision taken by the Board to the aforesaid effect is to be believed, then even the members of the Board who were party to the said decision were required to be impleaded as accused in the charge sheet. Having not done so, the petitioner, who was only the Managing Director and had moved the proposal, cannot be held liable singularly. It is further contended that the respondent Vigilance Organization has closed the case against the petitioner in another FIR which contained similar allegations pertaining to Jammu region and even the allegations contained in the instant FIR were subject matter of a complaint lodged before the Crime Branch, Kashmir, but the same was closed after enquiry. Next it has been contended by the petitioner that there is no allegation in the charge sheet that the petitioner has taken any benefit and, as such, the offence of criminal misconduct is not made out against him.

10) Respondents have contended that the work of extraction and transportation was allocated without resorting to tendering process and the same was allocated to unregistered contractors/mates at higher rates thereby causing loss to the State exchequer.

11) I have heard learned counsel for the parties and perused the material on record including the record of the trial court.

12) So far as the submission of learned senior counsel appearing for the petitioner that the decisions taken in a Board meeting come into effect immediately after the resolution is adopted and for implementation of these decision, confirmation of minutes in the next Board meeting is not to be awaited, is concerned, the same appears to be well-founded. To buttress his argument, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of Kerala State Electricity Board v. Hindustan Construction Co. Ltd and ors. AIR 2007 SC 425. In the said judgment the Supreme Court has clearly laid down that when the minutes of meeting are placed before the next meeting only thing that can be done is to see whether the decision taken at the earlier meeting has been properly recorded or not. The accuracy of minutes and not the validity of the decision is, therefore, considered in the next meeting. The

Court further observed that once the decision is duly taken, it can be changed by a substantive resolution properly adopted for such a change.

13) In the instant case, in 59th meeting of the Board of Directors, a decision was taken that the domicile restriction for choosing Amani from around the forest area where the timber was to be extracted is waived off and the quota of allocation of each Amani work be increased from 20,000 cft to 40,000 cft. The aforesaid meeting took place on 6th April, 2007. In the 60th Board meeting, which took place on 27.02.2008, the minutes of the 59th Board meeting were confirmed and no change was made to the aforesaid decisions. Therefore, the decision, as mentioned hereinbefore, that was taken on 6th April, 2007 in 59th Board meeting, had to be implemented immediately after the aforesaid date and it was not necessary or obligatory for the Corporation to wait for confirmation of minutes in 6th Board meeting. To this extent, the argument advanced by learned Senior counsel appearing for the petitioner deserves to be accepted and the allegation leveled by the prosecution against the petitioner to the effect that he had taken a decision to implement the resolutions adopted in 59th meeting even before their confirmation, is without any substance. Thus, no fault can be found in the action of the petitioner as regards the process which he initiated for implementing the aforesaid decision taken in 59th Board meeting nor can it be stated that the petitioner manipulated the decision taken by the Board in the said meeting as the members of the Board of Directors have not been impleaded as accused in the charge sheet nor they have been examined as witnesses to show that they were misled by the petitioner while making the aforesaid proposal.

14) That takes us to the other allegations made in the charge sheet. As already noted, as per the case of the prosecution the work was allotted to unregistered contractors/mates. There is material on record to show that as many as four contractors, namely, Suhail Ahmad Wani, Naseer Ahmad Wani, Mohammad Syed Wani and Mushtaq Ahmad Dar were not registered and their names figured in the list of the allottees. In this regard, learned Senior counsel appearing for the petitioner has vehemently argued that the petitioner vide his communications dated 07.05.2007 and 10.05.2007, while conveying approval of Forest Minister/Chairman, State Forest Corporation to General Manager, North, J&K, State Forest Corporation, Sopore, regarding allotment of work of extraction of timber to seven persons under 33% Amani category, it was made clear that the allotment shall be made subject to the condition that the persons are registered mates of SFC or get themselves registered before allotting the work and that norms of the Board shall be followed in this regard. Learned Senior counsel has argued that if in spite of these conditions stipulated in the communications addressed by the petitioner to the General Manager concerned, the work has been allotted to unregistered contractors/mates, no fault can be found in the action of the petitioner.

15) It is not in dispute that the work of extraction of timber, as per the Board norms, had to be allocated in favour of only registered contractors/mates. The

fact that the petitioner conveyed the aforesaid conditions regarding registration etc. to the General Manager concerned shows that the petitioner while processing the proposal of seven allottees did not verify as to whether these allottees were registered contractors/mates. The allegation in the charge sheet against the petitioner is that he did not seek any report from his subordinates before processing the applications for allotment and placing them before the competent authority i.e., Chairman of the Corporation. These allegations get fortified from the fact that the petitioner was not sure at the time of conveying approval to the allotment of works to these seven applicants, whether or not they were registered contractors/mates. Then there is evidence on record in the shape of report of the FSL that as many as four applications were written by one and the same person i.e. co-accused Bilal Ahmad Wani. This fact coupled with the fact that the petitioner had not, before processing these applications which were submitted to him directly, obtained any report from his subordinate offices so as to ascertain as to whether these applicants were eligible contractors/mates, raises grave suspicion as regards the role of petitioner in the whole matter.

16) There is yet another aspect of the matter which is required to be noticed. The allotment of extraction and transportation of timber has been made in favour of the applicants in respect of compartment 7(b) Baramulla. Admittedly, the said compartment was part of the tender notice issued by co-accused Abdul Gani Hajam but abruptly this item of the tender notice was withdrawn by issuing a corrigendum and the allotments were made in favour of the applicants without ascertaining as to whether they were registered contractors/mates. By dumping the process of tendering, the petitioner and the co-accused facilitated the allotment of works in favour of unregistered contractors/mates on pick and choose basis which is contrary to the rules and principles of allocation of Government largesse.

17) Another contention that has been raised by the petitioner during the course of arguments is that there has been no loss to the State exchequer and the petitioner has not obtained any pecuniary gain. It is contended that the works were executed after the petitioner had been transferred from the post and, as such, he did not have any role in execution of the works or payments to the contractors/mates.

18) If we have a look at the material on record, it does reveal that whole of the payments regarding extraction and transportation of timber by the seven allottees has not been made as the case was registered by the Vigilance Organization. However, there is material on record in the shape of statement of one of the allottees, namely, PW-Mohammad Sharief, according to whom he had received a payment of Rs.2.30 lacs in respect of the extraction and transportation work undertaken by him. Material on record further shows that extraction and transportation of timber has been made by other allottees as well. There is material on record to show that at the relevant time the rate of extraction/transportation of timber was Rs.32.92 per cft whereas it was

recommended by co-accused Abdul Gani Hajam at the rate of Rs.55.06 per cft. Thus, whatever amount of timber was extracted by the seven applicants before the work was stopped, the same was done by them at the rates higher than the approved rates which clearly make out a case of conferring undue benefit upon these seven applicants.

19) It has been contended that subsequently the rates of extraction and transportation of timber were approved by Corporation at much even higher rates than 55.06 per cft. These subsequent events cannot be taken into account as the allegations pertain to a period when the approved rates were Rs.32.90 per cft.

20) So far as the contention of learned Senior counsel appear for the petitioner that the petitioner was transferred and he had no role in fixation of rates or execution of the work or even in making payment to the applicants/allottees is concerned, the same is without any merit. It is a settled law that a person who is a part of conspiracy has not necessarily to be associated with the actual execution of the crime. A conspiracy is woven and conceived by different persons and different acts and roles are assigned to each conspirator to achieve the goal. So, it is not necessary that the petitioner should have been associated in the conspiracy right from the beginning till its objective is achieved. In the instant case, the petitioner has laid the foundation of the final execution, inasmuch as he has processed the applications of the allottees without ascertaining whether they were registered contractors/mates. He has facilitated allocation of the work to them on pick and choose basis, may be after the approval of the Chairman, but the proposal has been initiated by him. Had he ascertained whether or not the applicants were registered contractors/mates before processing their applications, the subordinate officers could not have succeeded in allocating the work to unregistered contracts/mates on pick and choose basis.

21) It is contended by learned Senior counsel appearing for the petitioner that in a similar case pertaining to Jammu region, the case has been closed by the Vigilance Organization. He has also contended that a complaint filed against the petitioner containing the same allegations as are the subject matter of the impugned charge sheet, has been closed by the Crime Branch, Kashmir. On this basis, it is urged that the respondent Investigating Agency could not have proceeded against the petitioner.

22) The aforesaid contentions raised by the petitioner are without any merit for the reason that the allegations contained in the FIR pertaining to Jammu region have no bearing upon the instant case. The FIR which is subject matter of impugned charge sheet has been investigated by the respondents on its own merits, as such, outcome of any other complaint or FIR will have no bearing upon the instant case. Similar is the fate of the argument based on closure of the complaint stated to have been verified by the Crime Branch. Merely because the Crime Branch has, without undertaking any investigation, closed the complaint, the material collected by the investigating agency during the course of

investigation of the instant FIR, cannot be overlooked.

23) From the foregoing discussion, it is clear that the material on record raises a grave suspicion as regards the involvement of the petitioner in the alleged crime. Therefore, this is not a fit case where this Court should exercise its inherent jurisdiction under Section 482 of Cr. P. C to quash the criminal proceedings initiated against the petitioner, particularly when charges have been framed against co-accused and they are facing trial before the Special Judge, in which the petitioner has participated.

24) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed. The learned trial court is directed to proceed in the matter in accordance with law without getting influenced by the observations made hereinbefore.

25) A copy of this order be sent to learned trial court for information and compliance.