**(1996) 09 J&K CK 0003**

**In the Jammu And Kashmir High Court**

**Case No :** C.W.P. No. 93 of 1996 and Petition No. 114 of 1995

Ghulam Nabi Sofi APPELLANT

Vs

State of Jammu and Kashmir and Others RESPONDENT

**Date of Decision :** 10-09-1996

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 561A
Jammu and Kashmir Prevention of Corruption (Amendment) Act, 2006 — Section 5, 5(2)
Jammu and Kashmir Public Men and Public Servants (Declaration of Assets and Other Provisions) Act, 1983 — Section 11, 2, 9

**Citation :** (1997) CriLJ 870

**Hon'ble Judges :** G.D. Sharma, J

**Bench :** Single Bench

**Advocate :** Sakal Bushan, for the Appellant; R. Pant and M. Koul, for the Respondent

**Final Decision :** Allowed

# Judgement

G.D. Sharma, J.—The petitioner is a public servant and working as Dy. Secretary to Government in the Civil Secretariat. Vigilance

Organisation of the Jammu and Kashmir State registered a case against him under FIR No. 22 of 1995 for the commission of offences falling u/s

5(2) of the Prevention of Corruption Act, Samvat, 2006 read with Section 11 of the Jammu and Kashmir Public Men and Public Servants

declaration of assets and other provisions Act, 1983 (hereinafter referred to be as the Act of 1983). It was found that the petitioner had not

submitted his property statements to the Government for the years 1984 to 1987, 1989 to 1994 without any reason.

2. Through the medium of petition No. 114 of 1995 made u/s 561-A, Cr.P.C., the quashing of said FIR No. 22 of 1995 was sought. In terms of

order dated 19-12-1995 passed in that petition, notice was issued to the other side and subject to the objections the investigating agency was

directed not to submit the challan in the court. The petition was still pending for admission when the Government accorded sanction for the

prosecution of the petitioner. Thereafter, the petitioner filed this writ petition (No. 93/96) wherein relief in the nature of writ of mandamus for

quashing FIR No. 22 of 1995 as well as quashing of the sanction for prosecution of the petitioner accorded under Government order No. 3-Home

(Vigilance) of 1996 dated 5-1-1996 is sought.

3. In terms of order dated 10-5-1996, this writ petition as well petition No. 114 of 1995 have been clubbed together. By this common judgment

both these petitions shall be disposed of.

4. The case of the petitioner is that he has been regularly submitting his property statements for all the years including the years in question and

respondent No. 3 had also recommended the case of the petitioner to respondent No. 1 for considering his case sympathetically. The sanction for

the prosecution was accorded without properly considering the case of the petitioner. u/s 11 of the Act of 1983, it was mandatory on the part of

the prescribed authority to issue a show cause notice to the petitioner before any action could be taken but in the present case no such notice was

issued and as such all the subsequent proceedings got vitiated.

5. In their objections, the respondents have taken the plea that case under FIR No. 22 of 1995 was registered against the petitioner as he had not

submitted his property statements. The investigating Officer had elicited an explanation from the petitioner and in his reply it was found that he had

submitted his returns for the years 1984 to 1987 but had failed to submit the same for the years 1989 to 1994. The petitioner had failed to

produce any receipt and on this count his plea was found baseless, and accordingly sanction for his prosecution was accorded.

6. Heard the learned counsel appearing for the parties.

7. The case of petitioner is that he had been submitting the property statements regularly for all the years but unnecessarily he is being prosecuted.

Respondents have controverted his plea by stating that he had failed to submit the property statements for the years 1989 to 1994 and thus had

infracted the provisions of Section 11 of the Act of 1983.

8. Mr. Bhushan has contended that u/s 9 of the Act of 1983 every public servant has to submit to the prescribed authority a return of all the assets

possessed by him and his family members within three months after he becomes a public servant. In the present case, the prescribed authority of

the petitioner was Government as he being a gazetted officer falls within the purview of Sub-section (c) (3) of Section 2 of the Act, 1993. Section

11 mandates that if any public servant without any reasonable cause which he shall be required to show fails to submit the returns annually, he shall

be guilty of committing criminal misconduct as specified in Clause (e) of Sub-section (1) of Section 5 of the Prevention of Corruption Act, Smvt,

2006. According to the learned counsel, for the present case the ""prescribed Authority"" was the Government and it was incumbent upon the

Government to issue a show cause notice to the petitioner herein before any penal action u/s 11 could be taken. This argument has been

controverted by the respondents by stating that the Investigating Officer who was a functionary of the Government called an explanation from the

petitioner who could show the cause of submitting the property statement for the years 1984 to 1987 only and not for 1989 to 1994.

9. From the conjoint reading of Sections 2, 9, and 11 of the Act of 1983, it transpires that in the instant case show cause notice should have been

issued by the Government for eliciting reasonable cause from the petitioner for the non-submission of the property statements of the years in

question and not by the Investigating Officer. If law requires something to be done in a particular manner that should be got done in the same

manner. According of sanction for the prosecution of a public servant by the Government is not an idle formality but a sacrosanct ritual which

requires proper application of mind. A power which specially has been vested under this Act in an authority cannot be delegated or borrowed by a

functionary of that authority who under law cannot be a substitute for the same. An Investigating Officer, whose statutory functions are only to

collect the evidence can by no stretch of imagination represent the Government to call any reasonable cause from a public servant for non-

submission of property statements as contemplated u/s 11 of the Act of 1983 and give its finding thereon. Any such exercise of authority by the

investigating officer has no sanction of law. The argument advanced by the counsel for the respondents in this behalf this pales into insignificance.

 

10. In view of the discussion made above, it is, therefore, held that the prosecution of the petitioner herein was initiated without following the

mandate of Section 11 of the Act of 1983 and this infirmity stares at the face and has vitiated the whole proceedings. In the result, Petition No.

114 of 1995 u/s 561-A Cr.P.C. as well as writ petition (No. 93 of 1996) are accepted. Accordingly, FIR No. 22 of 1995 u/s 5(2) of the

Prevention of Corruption Act Smvt. 2006 and the Government order No. 3 Home (Vigilance) of 1996 dated 5-1-1996 whereby sanction for the

prosecution of the accused-petitioner was accorded for the commission of the said offences are quashed. However, this judgment will not debar

the Government from again getting complied the provisions of Section 11 of the Act of 1983.

 