
(2007) 07 J&K CK 0013
In the Jammu And Kashmir High Court

J.K. Nargotra

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 09-07-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 561, 561 A

Citation : (2007) 3 JKJ 493

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Virender Singh, J.—Through the instant petition, the petitioner is seeking the quashing of the proceedings pending against him in the Court of

Special Judge, Anti Corruption, Jammu, with regard to Challan No. 28/2003 titled 'State v. Dr. Ghulam Nabi Qasba and ors'.

2. At the very outset Mr. Nitin Bhasin submits that respondent Nos. 2 to 5 are proforma respondents being co-accused of the petitioner and,

therefore, the contesting respondent is State only.

3. Pursuant to the notice, objections have already been filed by the State.

4. I have heard learned Counsel for both the sides and perused the material on record.

Mr. Bhasin submits that the Vigilance Organisation, Jammu, received the information with regard to the bungling and mis-utilization of funds

committed by officers of J&K Energy Development Agency (JAKEDA) for the purchase of Solar devices. This all led into registration of F.I.R.

No. 06/1998 and after completion of the investigation, four separate charge-sheet/challan were filed in the Court of Special Judge, Anti

Corruption, Jammu. The petitioner and eight other persons depicted in Annexure-A (list of accused) were arrayed as accused in challan Nos. 28

& 29 instituted on 27.10.1999. The petitioner and proforma respondent Nos. 2 to 5 were the members of the purchase committee; whereas

accused Nos. 6, 7 & 8 shown in the Annexure-A were instrumental in the installation of the Unit of accused No. 9 (Imtiyaz Ali) as Small Scale

Industrial Unit, which, in fact, was non-existent and non-functional Unit.

5. Mr. Bhasin then submits that proforma respondent Nos. 2 to 5, who were the members of the purchase committee, filed petitions for quashing

of the proceedings pending in Challan Nos. 28 & 29, but the petitioner did not file any petition. The said two petitions filed by the aforesaid four

persons are bearing Nos. 561-ACr.P.C. 127/2002 and 561-ACr.P.C. 28/2003. The said petitions were allowed by this Court. Mr. Bhasin then

submits that with regard to Challan No. 29, a judgment dated 11.02.2004 (Annexure-B) was passed and the Court extended the benefit of

judgment to the petitioner also for the reason that no case was made out against the members of the purchase committee, of which, admittedly, the

petitioner was also a member. However, while deciding the petition with regard to Challan No. 28, this Court vide judgment (Annexure-C)

allowed the petition qua proforma respondent Nos. 2 to 5, but did not extend the benefit of the judgment to the present petitioner.

6. Mr. Bhasin, on the basis of the aforesaid factual position, submits that the instant petition deserves to be allowed qua the petitioner for the same

relief, which has already been granted to the proforma respondent Nos. 2 to 5 vide Annexure-C. The petitioner and the aforesaid four persons

were the members of the purchase committee and a finding has been returned by this Court that there was no conspiracy between the members of

the purchase committee and the other accused persons. According to Mr. Bhasin, the case of the petitioner is squarely covered by the judgment

Annexure-C for the relief claimed herein.

7. Mr. Salathia is not in a position to dispute the case of the petitioner on facts.

8. This Court while allowing the petition vide order Annexure-B qua proforma respondent Nos. 2 to 5, in which, admittedly, the petitioner was not

the party, observed as under:

Learned Trial Court, therefore, erred in holding that prima-facie case against the

members of the Purchase Committee i.e. accused No. 1 to 5 was made out. The order impugned of the Learned Trial Court to that extent cannot be sustained and as such, is quashed and accused No. 1 to 5 are discharged. I am conscious of the fact that accused No. 4, one of the members of the Purchase Committee has not filed any petition for challenging the order impugned but in view of the fact that his case is identical to accused-petitioners, therefore, the order of the learned Trial Court against him alone cannot stand.

9. The petitioner was accused No. 4 and, therefore, the benefit was extended to him by virtue of the aforesaid order.

10. Admitted position before me is that the petitioner is one of the members of the purchase committee and once this Court vide judgment

(Annexure-C) has already held that there was no conspiracy between the members of the purchase committee and the other accused persons, and

on the basis of that reasoning alone, quashed the proceedings qua proforma respondent Nos. 2 to 5 in challan No. 28, I find no justification for not

extending the same relief to the petitioner also.

11. Resultantly, the instant petition is allowed and the proceedings qua the petitioner in challan No. 28 titled 'State v. Dr. Ghulam Nabi Qasba and

Ors.' pending before Special Judge, Anti Corruption, Jammu, are hereby quashed.