

(2022) 04 J&K CK 0014

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case No. 428 Of 2018

Niyaz Ahmad Baba & Anr

APPELLANT

Vs

State Of J&K & Anr

RESPONDENT

Date of Decision : 06-04-2022

Acts Referred:

Jammu And Kashmir Prevention Of Corruption Act, 1949 — Section — Section 5(1)(c), 5(1)(d), 5(2)

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 109, 120B, 409, 420, 467, 468, 471

Prevention Of Corruption Act, 2006 — Section 5(1)(d), 5(2)

Citation : (2022) 04 J&K CK 0014

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Showkat Ali Khan, Asifa Padroo

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioners have challenged the charge sheet arising out of FIR No.25/2010 for offences under Section 5(1)(c), 5(1)(d) read with Section 5(2) of J&K Prevention of Corruption Act and Section 120-B, 467, 468, 471, 409, 420 and 109 RPC registered with Police Station, Vigilance Organization, Kashmir.

2) Before coming to the grounds urged in the petition, it would be apt to narrate, in brief, the facts emerging from the impugned challan.

3) A Joint Surprise Check was conducted by the officers/officials of Vigilance Organization, Kashmir, into the allegations of abuse of official position by the officers/officials of Water Shed Management (LAWDA), Srinagar, regarding construction of Gabion Check Dams at Khimber Takya Sangh Reshi, Srinagar. It was revealed during the Joint Surprise Check that accused Mehraj-ud-din Shah, the then DFO, M. A. Chisti, the then DFO, Wiqar Ahmad, JE, and others, under a well-knit conspiracy and in connivance with contractors, have abused their official

position and misappropriated lacs of rupees in construction of Gabion Check Dam which was erected in the shape of stone beds covered with crate wire for treatment of Sangh Reshi Nallah at Khimber Takya Srinagar. It was found that ten works were executed by different contractors at the cost of Rs.109.97 lacs during the financial years 2006-07, 2007-08 and 2008-09. The Joint Surprise Check revealed that an amount of Rs.35.04 lacs was shown to have been spent on carriage of stones from Athwajan quarry and Wussan Nallah to the site of construction, namely, Nallah Sangreshi, while as no stone was found to have been used/transported from these places to the site. It was revealed that the stones which were available at the site were utilized in construction of Dams. Thus, the accused public servants including the petitioners herein had resorted to manipulation of records and misappropriated a sum of Rs.35.04 lacs.

4) After investigation of the case, the aforesaid allegations were found established against as many as 17 persons which included 11 contractors and 06 public servants. The offences were also found established against the petitioners as well. The role of the petitioners in the alleged crime is given separately in the charge sheet, the relevant extracts whereof are reproduced as under:

"Niyaz Ahmad Baba (then Range Officer LAWDA) S/o Mohammad Yousuf Baba R/o Pazwalpora Shalimar, Srinagar.

The accused in his capacity as Range Officer in Watershed Management Division LAWDA Srinagar along with Watershed Manger Mohammad Aslam Chesti and Forester Noor Mohammad Khan and Watershed Manager Mohammad Aslam Chisti have laid foundation of this criminal conspiracy. They have prepared estimates for first four weeks; (a) Construction of Gabion Check Dam-III At RDs 0, 15,34,60,75,93,112, m At Takiya Sangreshi (Burn Nallah),

(b) Construction of Gabion Check Dam-III at RDs 145,160, 181,196,224,225,275 m at Takiya Sangreshi (Burn Nallah) (c) Construction of Gabion Check Dam-III at Rds. 380,451,487,603 m at Takiya Sangreshi (Burn Nallah), (d) Construction of Gabion Check Dam-III at Rds 530,546,564, 632 M at Takiya Sangreshi (Burn Nallah) and kept provision for stones from Athwajan quarry, fully knowing that area at site is full of stones and there is no need of stones from outside source. This provision was kept with the intention to use local stones and pay for the stones from Athwajan Quarry. Though, he was later on dissociated from these works but he is the founder member of the criminal conspiracy.

The above mentioned commissions and omissions on the part of accused Niyaz Ahmad Baba, constitute the offence u/s 5(1) (d) r/w 5(2) P.C. Act Svt. 2006 and section 120-B RPC.

Noor Mohammad Khan (then Forester in LAWDA) S/o Mohammad Dilawar Khan R/O Meerak Abad Shalimar, Srinagar.

The accused in his capacity as Forester in Watershed Management Division LAWDA Srinagar along with Watershed Manager Mohammad Aslam Chesti and

Range Officer Niyaz Ahmad Baba and Watershed Manager Mohammad Aslam Chisti have laid foundation of this criminal conspiracy. They have prepared estimates for first four works; (a) Construction of Gabion Check Dam-III at RDs 0,15,34,60,75,93,112 m At Takiya Sangreshi (Burn Nallah),

(b) Constructions of Gabion Check Dam-III at RDs 145,160,181, 196,224,225,275 m at Takiya Sangreshi (Burn Nallah), (c) Construction of Gabion Check Dam-III at Gavion Check Dam-III at RDs 380,451,487,603 m at Takiya Sangreshi (Burn Nallah), (d) Construction of Gabion Check Dam-III at RDs 530,546,564,632 m at Takiya Sangreshi (Burn Nallah) and kept provision for stones from Athwajan Quarry, fully knowing that area at site is full of stones and there is no need of stones from outside source. This provision was kept with the intention to use local stones and pay for the stones from Athwajan Quarry. Though, he was later on dissociated from these works but he is the founder member of the criminal conspiracy.

The above mentioned commissions and omissions on the part of accused Noor Mohammad Khan, constitute the offence under section 5(1)(d) r/w 5(2) P.C. Act Svt. 2006 and section 120-B RPC."

5) The petitioners have challenged the impugned challan on the grounds that they had only prepared the estimates wherein they had kept a provision for getting the stones from Athwajan quarry. It is contended that, admittedly, the petitioners were disassociated from the said work and were transferred in the year 2007-08 from Lakes and Waterways Development Authority, as such, it cannot be stated that they have committed any offence as they were not serving in the department at the time of actual execution of the works and disbursement of payments to the contractors.

6) According to the petitioners, even the NIT was issued and execution process was carried on after the petitioners had been transferred, as such, the petitioners could not have any idea about the identity of the beneficiaries. Thus, they could not be roped in the charge sheet by alleging that they were the part of the conspiracy. It has also been contended that the option of getting stones from outside source was kept open by the petitioners in the estimates prepared by them because there was prohibition imposed by the Government from carrying on any quarrying operations from the waterbodies/dams located in the area in question.

7) I have heard learned counsel for the parties and perused the record of the case.

8) The primary ground that has been urged by the petitioner is that they cannot be roped in the charge sheet by alleging that they have been a part of the conspiracy because at the time of execution of works and disbursement of amounts to the beneficiaries they were not serving in the department and even as per the charge sheet they had been disassociated from the work.

9) In this regard, it is to be noted that allegation against the petitioners is that they prepared the estimates for as many as four works and kept the provision for getting stones from Athwajan quarry fully knowing well that the area in question is full of stones and that there is no need to get stones from outside source. According to the charge sheet, this provision of getting stones from outside source was done with an intention to draw the amounts representing the cost of stones from Athwajan quarry while actually using the stones available on the site and to draw amounts on account of carriage charges as well. These allegations are supported by the material on record and even in the petition, the petitioners have not denied the fact that they were the architect of the estimates which became the basis of future execution of the works.

10) It is a settled law that it is not necessary that all the conspirators should participate from the inception to the end of the conspiracy. Even though the petitioners were disassociated from the works that were subject matter of the Joint Surprise Check, yet the material on record certainly suggests that the basis for the commission of actual crime of misappropriation of Rs.35.04 lacs had been laid by the petitioners. Had the petitioners not kept any provision for getting stones from outside sources in the estimates prepared by them, it would not have been possible for the co-accused to draw the money on account of cost of carriage charges and cost of stones from outside sources. The mere fact that the petitioners were not working in the department at the time when the actual crime took place, would not make any difference.

11) The Supreme Court in the case of State of Tamil Nadu vs. Nalini and others, AIR 1999 SC 2640, while determining the question whether common intention was terminated before the commission of actual crime, observed as under:

"..... It is not necessary that all the conspirators should participate from the inception to the end of the conspiracy; some may join the conspiracy after the time when such intention was first entertained by any one of them and some others may quit from the conspiracy. All of them cannot but be treated as conspirators. Where in pursuance of the agreement the conspirators commit offences individually or adopt illegal means to do a legal act which has a nexus to the object of conspiracy, all of them will be liable for such offences even if some of them have not actively participated in the commission of those offences."

12) Again in Yash Pal Mital vs. State of Punjab, AIR 1977, the Supreme Court while, defining the offence of criminal conspiracy, made the following observations:

"The offence of criminal conspiracy under section 120A is a distinct offence introduced for the first time in 1913 in Chap. VA of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the

conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences, may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two- of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy.”

13) From the foregoing enunciation of the law, it is clear that it is not necessary that every participant in a criminal conspiracy should have the knowledge of the part that is being played by other co-conspirators or that his participation should be from the very inception of the conspiracy to its actual execution i.e. commission of actual offence. So, the contention of the learned counsel for the petitioners that the petitioners were disassociated from the entire process long before the actual works were executed and payments were made to the beneficiaries and, as such, they cannot be booked for the offence of criminal conspiracy, is without any merit.

14) For the foregoing reasons, I do not find any merit in this petition. The same is, accordingly, dismissed.