

(2019) 02 J&K CK 0068

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 154 Of 2016

Noor-ud-Din Wani

APPELLANT

Vs

State Of Jammu & Kashmir Through Vigilance Organization
Kashmir Srinagar

RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(1), 155(2), 161, 239, 397, 401, 482
Jammu & Kashmir Prevention Of Corruption Act, 2006 — Section 5(1)(d), 5(2)
Code Of Criminal Procedure, 1898 — Section 561, 561A
Constitution Of India, 1950 — Article 226

Citation : (2019) 02 J&K CK 0068

Hon'ble Judges : Rashid Ali Dar, J

Bench : Single Bench

Advocate : M. Y. Bhat, N. H. Shah

Final Decision : Dismissed

Judgement

1. The petitioner herein seeks indulgence of this Court for quashing the order dated 18.02.2016, passed by the Court of learned Special Judge Anti-Corruption (Additional Sessions Judge) Pulwama, in case titled "State through VOK v. Ghulam Haider Bhat and Others" along with memo of charge framed as against the petitioner for the commission of offence punishable under Section 5 (1) (d) read with 5 (2) of J&K PC Act, and Section 419, 468, 471, 120-B RPC. He also seeks quashment of FIR bearing No. 19/2009, registered at Police Station VOK along with complaint No. 33/Anti-Corruption filed before the Court of learned Special Judge Anti-Corruption (Additional Sessions Judge) Pulwama, to the extent of petitioner herein.

2. The learned Additional Sessions Judge in terms of order dated 18.02.2016 (for short referred as impugned order) has framed charge against the accused for the commission of offences punishable under Section 5(1) (d) read with Section 5(2) of J&K PC, Act, 419, 468, 471, 120-B RPC, the relevant portion of which reads as under:

"Now reverting back to the case at hand, so far as role of accused No. 1 is concerned he being Director Agriculture Kashmir Division, Srinagar, had vetted Sub tribal plan for District Pulwama initiated by accused No. 2 and no purchasing committee was constituted by the Director which was mandatory in view of the Government order in operation. Further accused No. 2 or accused No. 3 were not competent to affect the purchase of Sudan Grass Hybrid Seeds without inviting tenders and record reveals that no tendering was initiated in the purchase of Sudan Grass Hybrid Seeds. Accused No. 4 had prepared fake and fictitious authentication letter from M/s Garnier Seeds, Delhi declaring thereby M/s Modern Seed, Farm Srinagar. as sole registered dealer of M/s Garnier Seeds, Delhi and had shown rate of Hybrid Sudan Grass at Rs. 225/- per kg. It is explicit from the record that no competitive bidding was done and seeds were purchased at exorbitant rates thereby causing loss to state exchequer to the tune of Rs. 5,25,875/-. The plea of defence counsel is that accused Nos. 1 and 2 are not involved in any manner and they had followed all codal formalities is misconceived, because neither accused No. 1 ever constituted any purchasing committee as mandated under law and vetted draft plan prepared by accused No. 2 and approved its rates indicated in the sub plan on exorbitant rates and neither accused Nos. 2 and 3 were competent to affect purchase of Sudan Grass Hybrid Seeds without inviting tenders to give benefit to accused o. 4 and conspiracy angle interse the accused persons is established. So there is sufficient material available on record against the accused persons at this stage to frame charges against accused and put them to trial. Court though cannot appreciate the evidence in detail and cannot presume end of trial at this stage. Prima facie there is a strong presumption for commission of alleged offences by the accused persons. Charge, as such, is framed against the accused persons for the commission of offences punishable under Section 5(1) (d) read with Section 5(2) of J&K PC, Act, 419, 468, 471, 120-B RPC. The memo of charge were read over and explained to accused persons, they pleaded not guilty and claimed the trial. So, prosecution is directed to adduce evidence on 16.04.2016."

3. Pertinent extracts of the final report prepared by Investigating Agency on which charge framed is reflected as under:

"The instant case owes its origin to a Verification conducted into the allegations that during the year 2002-03, S/Shri Noor-ud-Din Wani, then District Agriculture Officers (Extension) Pulwama, Ghulam Hyder Bhat, then Director Agriculture Kashmir under a well-knit conspiracy with Shri Mohammad Sideeq Rather, Proprietor M/s Modern Seed Farm, Srinagar, had dishonestly shown placement of different supply orders with M/s Garnier Seeds India Delhi for supply of 30.5 Qtsl of Hybrid Sudan Grass Seed. It was alleged that supply orders issued had never reached M/s Garnier Seeds (India) Delhi and were found placed dishonestly by public servants without inducing any competition to make purchases from M/s Modern Seed Farm, Srinagar, on highly exorbitant rates. It was further found that in furtherance of criminal conspiracy Proprietor of M/s Modern Seed Farm, Srinagar, Shri Mohammad Sideeq Rather had resorted to forgery and prepared a

fake and fictitious authorization letter purportedly issued by M/s Garnier Seeds (India) Delhi declaring thereby M/s Modern Seed Farm, Srinagar, as registered distributor for M/s Garnier Seeds (India) Delhi and shown rate of Hybrid Sudan Grass Seeds at Rs. 225/- per kg. It was also found that Shri Noor-ud-Din Wani, then District Agriculture officer (Extension) Pulwama, in league with other public servant and proprietor M/s Modern Seed Farm, Srinagar, had dishonestly released the payment in favour of M/s Modern Seed Farm, Srinagar, before the issuance of supply orders. It was also alleged that Shri Ghulam Hyder Bhat, then Director Agriculture Kashmir, had in furtherance of criminal conspiracy dishonestly dispensed with constitution of purchase contract committee and had approved Sub-Tribal Plan for District Pulwama, wherein the rate of Hybrid Sudan Grass Seeds were shown as Rs. 225/- per kg. Accused public servants in league with Proprietor M/s Modern Seed Farm Srinagar, were found to have dishonestly and in furtherance of criminal conspiracy purchased 30.5 Qtls of Hybrid Sudan Grass Seeds on highly exorbitant rates to confer undue benefit upon themselves and supplier firm against corresponding loss to the state exchequer.

On perusal of documents, it has revealed that Shri Noor-ud-Din Wani, then District Agriculture Officer (Extension) Pulwama has placed orders for supply of Hybrid Sudan Grass with M/s Garnier Seed (India) Pvt. Limited Delhi through various supply orders viz.

(i) Supply order No. DAO/Ext/Dev/Pul/1391-93 = 11.10 Qtls.

(ii) Supply order o. DAO/Ext/Dev/Pul/1408 = 11.10 Qtls.

(iii) Supply order No. ADO/Ext/Dev/Pul/1394-96 = 7.85 Qtls.

It was also found that in all 30.5 Qtls. of Sudan Grass Seeds were procured at the rate of Rs. 225/- per kg. The supply orders had been shown issued in favour of M/s Garnier Seed (India) Pvt. Ltd. Delhi, but never reached to the said firm, instead with dishonest and criminal intention were received by M/s Modern Seed Farm, Srinagar. In this context, Shri Bashir Ahmad Mir, then Chief Agriculture Officer has released an amount of Rs. 7.00 lacs vide order No. 31/CAO of 2003 dated 24.03.2003, 47/CAO of 2003 dated 27.03.2003 and 37/CAO dated 24.03.2003 respectively. Shri Noor-du-Din Wani as DDO has passed bills vide No. 0331 dated 11.03.2003 for an amount of Rs. 2,49,750/- bill No. 0443 dated 15.03.2003 for Rs. 2,49,750/- and bill No. 0342 dated 10.03.2003 for an amount of Rs. 1,76,625/- making total of Rs. 6,76,125/- in favour of M/s Modern Seed Farm, Srinagar, without receiving the full quota of 30.05 Qtls. of Hybrid Sudan Grass and released full payment in favour of supplier firm. The District Agriculture Officer was under law required to get Seed germination/purity test of the seeds conducted before making any payments. This fact has also been over looked by the then Chief Agriculture Officer.

During the course of investigation, the admitted signatures of Shri Ghulam Haider Bhat, then Director Agriculture Kashmir, Shri Noor-ud-Din Wani, then District Officer (Extension) Pulwama and Bashir Ahmad Mir, then Chief

Agriculture Officer, Pulwama, were obtained and same were referred to FSL Srinagar, for examination. The opinion was received in positive. It was also found that the accused proprietor of M/s Modern Seed Farm, Srinagar, Shri Mohammad Sideeq Rather after hatching a conspiracy with accused officers of Agriculture Department prepared fake and fictitious documents showing M/s Modern Seed Farm, Srinagar, as sole registered dealer of M/s Garnier Seeds, Delhi.

In the course of investigation, the registered local dealers whose proforma bills had already been obtained were approached and their statements were recorded under Section 161 Cr. PC.

During investigation, it was found that by approving the Sub-Tribal Plan for purchase of Hybrid Sudan Grass at Rs. 225/- per kg, a flood gate for purchase of Sudan Grass was opened generally in other parts of the valley and district Pulwama in particular. Investigation conducted has revealed that Shri Ghulam Hyder Bhat, then Director Agriculture, Kashmir, Srinagar, Shri Bashir Ahmad Mir, then Chief Agriculture Officer, Pulwama and Shri Noor-ud-Din Wani, then District Agriculture Officer (Extension), Pulwama, in league with supplier Shri Mohammad Sideeq Rather, Proprietor M/s Modern Seed Farm, Srinagar, purchased Sudan Hybrid Grass on highly exorbitant rates with consequent loss to state exchequer.

4. Before examining the merits of the petition, it will be profitable to give a brief account of the facts and the grounds finding reference in the petition:-

"That the petitioner is a reputed and dedicated Government Employee and was posted as District Agriculture Officer (Extension) Pulwama long back in the year 2002. The Tribal Sub Plan for District Pulwama as approved for the year 2002-2003 by the Authorities which inter alia provided for procurement of seeds so that the same could be utilized for effective growth and production/harvesting. In this behalf the higher authorities, precisely the Chief Agriculture Officer received communications from one Garnier Seeds India Private Limited, which proposed to provide high quality hybrid high tech seeds of various vegetables and fodders. The rate quoted for the said innovative fodder seeds was Rs. 225/- per kg. The said communications were addressed to the Chief Agriculture Officer Pulwama and the same was forwarded by him to the Director Agriculture Kashmir. The Director Agriculture after vetting the said plan and verifying the contentions therein on technical grounds approved the said plan which approval was forwarded to the Chief Agriculture Officer. The petitioner like all other District Officers had no concern with the contract till this stage. He never made any proposal nor suggested any rates. Rather he did not even know of the course being adopted by the higher authorities. The Chief Agriculture officer being the Budget controlling Officer in the District released funds in favour of the petitioner, the then District Agriculture Officer vide order dated 24.03.2003. The condition No. 6 of the order clearly stated that the seeds/supply must be received from the firm as communicated in the Tribunal Sub Plan. Hence the question of any deviation by the petitioner was not possible at all and the same would amount to misconduct. Thus the Director Agriculture as also the

Chief Agriculture Officer Pulwama issued duly endorsed orders to the petitioner herein to procure the seeds from M/s Modern Seeds Farm with express directions to release the payment after receiving the supplies by the petitioner by virtue of the said order.

That however, lately in 2009 an FIR bearing No. 19/2009 under prevention of Corruption Act and other relevant Sections of the RPC was lodged and accordingly investigation was initiated. Various allegations were leveled against the officers, the primary allegation being purchase of the seeds on exorbitant rates. As against the petitioner herein allegations were leveled in the challan filed by the prosecution wherein to the effect that the petitioner had dishonestly released the payment before issuance of any supply orders and also that the purchase orders had been falsely shown to be issued in favour of M/s Garnier Seeds, while as the same were received by another firm, M/s Modern Seeds. The petitioner was alleged to have issued three supply orders all of which were dated 27.03.2003, but bills were passed prior to the issuance of supply orders without receiving the full supplies. It was also alleged that no purity tests of the seeds was conducted before making any payments. It was also alleged that no purchase committee was formed to look into and determine the contracts after comparing competitive rates.

That the allegations were controverted by the accused persons including the petitioner and accordingly the challan was first listed for arguments on charge. After detailed arguments and counter arguments the trial Court vide its order dated 18.02.2016 concluded that there is sufficient material as against the accused persons to frame charges and put them to trial.

Accordingly the memo of charge was issued against the accused including the petitioner who is accused No. 2 in the said challan.

That it is pertinent to mention here that many of the allegations leveled by the prosecution were dropped in the memo of charge after hearing the arguments on the said issues. It was argued that since the Garnier Seeds Limited is the sole company authorized to sell the procured seeds, thus issuance of tenders, etc., was un-required and unreasonable. Further the supply orders had been issued before the Government order for formation of committees was issued and thus there was no violation in this behalf. It was also observed that no re-testing was required back then under the Seeds Act and was neither in practice in the department. Accordingly, no consideration was given by the trial Court to the said charges including the issue of release of funds prior to receiving of supplies. The drawal register, stock register and supply orders were examined by the trial Court. The memo of charge issued against the petitioner thus having been satisfied on all other issues, only mentions and charges the petitioner on the ground that the seeds have been procured on highly exorbitant rates by dispensation with the purchase committee.

That the sole allegation which now has been leveled against the petitioner and on

the basis of which the trial has been directed to be conducted is that the seeds have been procured on exorbitant rates after dispensation with purchase committee. It is highly unfortunate that the petitioner has been charged on the basis of the said allegation when the investigations of the Vigilance Organization have clearly revealed that the rates have been approved by the Director Agriculture, Kashmir. The prosecution has clearly mentioned in the FIR/complaint that the Director had approved the rates of Rs. 225/- per kg and accordingly the said is a settled and admitted fact and the admitted fact of this nature cannot be made the basis of dragging the petitioner into a trial which may continue for years together. It may not be out of place to mention here that the then Director Agriculture Kashmir has himself admitted his signatures and approval of the said proposal before the Court in his written arguments, although he has set up some other defenses in his favour. This being the position it is not understandable as to how the petitioner can be charged for the said offence when the said rates have been approved by higher authorities as per the FIR, Challan, admissions of higher authorities and also observations of the trial Court. Thus on the basis of admitted facts the petitioner could not be charged at all. It is pertinent to mention here that the challan has at page 4 clearly mentioned that it has been revealed that the draft plan has been prepared by the chief Agriculture Officer Pulwama and has been vetted and approved by the Director Agriculture while as in the order impugned the trial Court has held at page 5 that the plan for District Pulwama has been initiated by accused No. 2 (petitioner herein) which finding/observation which has becomes the basis of the charge is totally adverse to challan/findings of investigating agency and also the record available of the case. The admitted position has been wrongly interpreted as the petitioner had absolutely no role in preparing or forwarding the draft plan as has already been explained in detail. Even the charge as regards the petitioner is something else as he has been charged because of dispensation with the purchasing committee. The arguments that the purchasing committee order was issued subsequent to the orders in question and the admitted position that the petitioner has not role in the said issue as the Director is otherwise also head of the Purchasing Committee and his orders are binding upon the petitioner has been given no consideration thus the challan as against the petitioner was for one set of facts, i.e., release of money before receiving supplies, etc., which has been given no weightage by the trial Court after hearing arguments. But the trial Court has self-evolved other set of facts not present in challan, rather totally contradictory to challan like the initiation of the draft plan by the petitioner. Then the charge has been framed on the basis of some other fact, i.e, dispensation with purchase committee with which the accused had absolutely nothing to do.

That Section 76 of RPC also provides for protection of acts done by a person when such person in good faith believes himself to be bound by law to do it. No act which is done under said good faith is an offence howsoever gruesome it may be on the fact of it. The first illustration of the Section even specifies that a soldier commits no offence if he fires on a mob under the orders of his superior

officer. Thus a person has committed no offence even when he has went to kill someone when the same was done under the orders of superior officers. The petitioner has only acted on the express commands of higher authorities and it is the higher authorities who had approved the rates/plans and had released the payments so that the same could be made available to the seller. The petitioner's role admittedly is only to receive the supplies and distribute them amongst the farmers and after such receiving of supplies release the payment as per the approved rates which in the present case was approved by the Director Agriculture. It may not be out of place to mention here that in any case the Director is also the authority to exercise the powers of fixation of rates as he is the chairman of any Purchasing Committee constituted and thus his decision was binding on the petitioner and he could not act adverse to same. Had he done so there was every possibility that departmental action would have been taken against him. This clear and unambiguous legal and factual position admitted by all before the trial Court renders the impugned order and memo of charge unsustainable.

That it may not be out of place to mention here that the Tribal Sub Plan was not only applicable to Pulwama but to all areas and accordingly the seeds were procured on the same rates in all Districts. Some officers refused to act upon the rates and they were later on directed to release same which they eventually did. Thus the arraying of only one District Agriculture Officer and leaving out other Districts is uncalled for and discriminatory. Besides, all the officers, even those who refused at the first instance, eventually had to release the payments as the higher authorities desired the same. This is the reason that District Officers of other Districts were not charged as after investigations no role of such Officers was found.

That the trial Court has also fallen into serious error of law by charging the petitioner for an offence which was never alleged against him in the FIR/Challan. The only allegations pertaining to the petitioner were about prior release of money, etc., which stand clarified in view of record produced before the trial Court. Although a trial court has powers to alter charge when upon the set of facts projected by the Investigating authorities it seems that a different offence is made out, but there is absolutely no power to the effect that the set of facts and conclusions drawn by the investigating authorities be altered to make an innocent person shoulder the burden of the trial. The investigating authorities have clearly held that in view of investigations the rates have been approved by Director and it is because of this reason that the District Officers of other areas have not been prosecuted as otherwise the seeds have been procured in all Districts of State including Leh and Ladakh in terms of same contract and upon same rates. Thus the trial Court has exceeded its jurisdiction which has resulted in abuse of the process of law.

5. In the status report, filed by the respondent, it is stated that

(a) During the investigation, it was established that the accused petitioner Noor-

ud-Din Wani, the then District Agriculture Officer, Pulwama placed orders for supply of Hybrid Sudan Grass with M/s Garnier Seeds India Pvt. Limited Delhi through various supply orders viz:

- (i) Supply order No. DAO/Ext/Dev/Pul/1391-93 dated 27.03.2003 for 11.10 Qtls.
 - (ii) Supply Order No. DAO/Ext/Dev/Pul/1408 dated 27.03.2003 for 11.10. Qtls.
 - (iii) Supply Order No. DAO/Ext/Dev/Pul/1394-96 dated 27.03.2003 for 7.5 Qtls.
- (b) It is pertinent to mention here that the petitioner/accused was functioning as DDO at the relevant time and has passed following bills:-
- (i) Bill vide No. 0331 dated 11.03.2003 for an amount of RS. 2,49,750/-;
 - (ii) Bill No. 0443 dated 15.03.2003 for an amount of Rs. 2,49,750/-; and
 - (iii) Bill No. 0342 dated 10.03.2003 for an amount of Rs. 176,125/- in favour of Modern Seed Farm Srinagar, without receiving the full quota of 30.05 Qtls. of Hybrid Sudan Grass and released full payment in favour of supplier firm. The petitioner as District Agriculture Officer was under law required to get seed germination purity test of the seeds conducted before release of the payments to the beneficiary supplier which he never assured.

6. Mr. Bhat, learned counsel for the petitioner contended that the petitioner herein had no role in placing the order for procurement of the seed as the final report itself makes it manifestly clear that it was the Purchasing Committee who had worked out the rates and other allied aspects and so the charge levelled against the present petitioner is groundless. The allegation of passing the bills before receipt of the assignment intended to be purchased also stands belied by the report presented before the Court. Similarly, there is no force in the allegation levelled against the petitioner that he omitted to get the seed tested as under the provisions of Seeds Act, it is not necessary for the hybrid seeds. He has also referred to page 34 of the petition which is in the form of charge framed against the present petitioner. The act could be attributed to Director and Chief Agriculture Officer and not the present petitioner. As is also pointed out by a summary reading of page 21 of the order bearing No. 31/CAO of 2003 dated 24.03.2003, issued by the Chief Agriculture Officer.

7. Mr. Bhat, learned counsel for the petitioner has placed reliance on following judgments in support of the contentions:-

- (i) State of Haryana v. Bhajan Lal, reported in AIR 1992 SCC 604.
- (ii) K. Ramakrishna and Others v. State of Bihar and Another, reported in AIR 2000 SC 3330

In case referred at S. No. (i), the Hon'ble Apex Court has elaborately considered the scope and ambit of Section 482 Cr. P.C. and Article 226 of the Constitution of India in the context of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements, the Supreme Court enumerated certain

categories of cases by way of illustration, where the power under Section 482 Cr. P.C. can be exercised to prevent abuse of the process of the Court or secure ends of justice. Paragraph 102, which enumerates seven categories of cases where power can be exercised under Section 482 Cr. P.C. are extracted as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In case referred as S. No. (ii), the Hon'ble Apex Court has held that the trial Court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an enquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out the criminal proceedings instituted against the accused are required to be dropped or quashed.

8. Mr. Shah, learned AAG appearing for the respondent has submitted that there is no scope for quashment of proceedings now as the trial has made substantial progress with examination of eight prosecution witnesses. Furthermore, according to him scale for examining the material collected by the Investigating Agency for framing of charge is not of the stage as is being used at conclusion of trial to record findings of conviction or acquittal. Whether there is ground to proceed against the accused is the sole contention that is to be satisfied. The procedure applicable in the instant case is of a warrant case and matter is to be eyed in the light of same. The argument of other side is misplaced according to him as the Investigating Agency has categorically alleged that the accused had hatched a conspiracy whereby 30.3 Qtls. Hybrid Sudan Grass Seeds were procured by the accused from M/s Modern Seed Farm, Srinagar, on exorbitant rates.

9. He has placed reliance on following judgments in support of the contention.

(i) Shrish Dutt & Others v. State & Others, reported in 2010 (2) JKJ 316 (HC)

(ii) Manjula Sinha v. State of U.P, reported in 2008 (3) SCC (Crj) 271.

In case referred at S. No. (i), it has been observed that the questionable conduct of accused whether leads to completion of the chain of alleged conspiracy requires to be decided on evidence led at the trial and accused cannot be absolved at the charge framing stage despite noting such questionable conduct.

In case referred at S. No. (ii), their lordships of Hon'ble Apex Court have observed that where charge-sheet has already been filed and charge also framed, question of quashing FIR does not arise.

10. Heard learned counsel for the parties and perused the material placed on record.

11. It would also herein proper to refer judgment of Hon'ble Apex Court titled Janta Dal v. H. S. Chowdhary, reported in AIR 1993 SC 892, 1993 CriLJ 600. While summarizing the principles in the light of which inherent powers can be exercised, the Apex Court has observed:

132. The criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be

exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

133. The Judicial Committee in (1) *Emperor v. Nazir Ahmad* and (2) *Lala Jai Ram Das v. Emperor* has taken the view that Section 561-A of the old Code gave no new powers but only provided that those which the Court already inherently possessed should be preserved. This view holds the field till date.

134. This Court in *Dr. Raghbir Sharon v. The State of Bihar* had an occasion to examine the extent of inherent power of the High Court and its jurisdiction when to be exercised. Mudholkar, J speaking for himself and Raghubar Dayal, J after referring a series of decisions of the Privy Council and of the various High Courts held thus:

...every High Court as the highest court exercising criminal jurisdiction in a State has inherent power to make any order for the purpose of securing the ends of justice.... Being an extraordinary power it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate Court to its powers....

135. See *Talab Hazi Hussain v. Madhukar Purshottam Mondkar and Anr.* [1958] SCR 1226 and *Pampapathy v. State of Mysore* [1966] (Supp.) SCR 477.

136. Thus, the inherent power under this Section can be exercised by the High Court (1) to give effect to any order passed under the Code; or (2) to prevent abuse of the process of any Court; or (3) otherwise to secure the ends of justice. In relation to exercise of inherent powers of the High Court, it has been observed in *Madhu Limaye v. State of Maharashtra* that the power is not to be resorted to if there is a specific provision in the Code for the redress of grievance of the aggrieved party and that it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice and that it should not be exercised as against the express bar of law engrafted in any other provision of the Code. Vide (1) *Talab Hazi Hussain v. Madhukar Purshottam* ; (2) *Khushi Ram v. Hashim and Ors.* AIR 1959 SC 542; and (3) *State of Orissa v. Ram Chander Agarwala* .

137. This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction to quashing the proceedings at any stage.

This Court in *State of Haryana and Ors. v. Ch. Bhajan Lal and Ors.* [1990] 3 Supp. SCR 256 to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings. We do not, therefore, think it necessary in the present case to extensively deal with the import and intendment of the powers under Sections 397, 401 and 482 of the Code.

12. The Apex Court in the case of *Satvinder Kaur v. State*, reported in AIR 1999, SC 3597 held that the appreciation of the evidence is the function of the Court which is seized of the matter. Further their lordships observed that for the purpose of exercising its power under Section 482 Cr. PC, to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegation made in the complaint or the documents accompanying the same. Per se, it has no jurisdiction to examine the correctness of otherwise of the allegations.

13. In case *Manjula Sinha v. State of U.P.*, reported in 2008 3 SCC (Cri) 271 their lordships of Hon'ble Apex Court observed that where charge-sheet has already been filed and charge also framed, question of quashing FIR does not arise.

14. In the light of settled legal position, it requires to be underscored that the inherent jurisdiction under Section 561-Cr. PC has to be exercised sparingly, carefully and with caution. From the facts pleaded, it is clear that the final report has been submitted before the concerned Court on 26.09.2009 and the petitioner herein has been held prima facie guilty for the commission of offences under Sections 5 (1) (d) read with Section 5 (2) PC Act, Svt. 2006 read with Section 120-B, 419, 468 and 471 on 18.02.2016. In the charge framed against the accused, it has stated that the petitioner during the year 2002-03 while being posted, then District Agriculture Officer (Extension), Pulwama, Kashmir, hatched criminal conspiracy with other accused/public servants named in the charge sheet to enable accused No. 4 (Proprietor M/s Modern Seed Farm, Srinagar) to supply of 30.05 Qtls of Hybrid Sudan Grass Seeds on highly exorbitant rates and conferred undue benefit upon himself and other accused including supplier firm against corresponding loss to the state exchequer. It is further submitted that accused in furtherance of conspiracy dishonestly dispensed with constitution of purchase committee and approved Sub Tribal Plan for District Pulwama for purchase of 30.05 Qtls. of Hybrid Sudan Grass Seeds @ Rs. 225/- per kg as against Rs. 50/- per kg in order to confer undue benefit for upon themselves with the result, loss to an amount of Rs. 5,25,875/- has been caused to the state exchequer.

15. Viewing the matter in the above backdrop, I am of the opinion that this Court would not be justified in embarking upon an enquiry as sought by the petitioner herein regarding his stand about the prosecution story or in returning any finding as to the nature of allegations levelled in the FIR and the substance of which has been referred in the charge framed against the petitioner. The facts as projected by the petitioner before this Court require an in-depth examination, which is

possible only at the trial of case before concerned Court. It would be wholly inapt at this stage to conclude the allegations levelled against the petitioner are vexatious in nature and so to quash the proceedings referred supra. It may be also relevant herein to note that charge has already been framed against the petitioner herein by the trial Court and some of the witnesses examined. The FIR approximately is a decade old and the trial has made a substantial progress. Proper it may be also to note that how petitioner reacted during the currence of investigation about the allegation referred above is not being indicated in the petition.

16. For what is stated above, I am of the opinion that no case is made out for exercise of power under Section 561_A Cr. PC. Accordingly, there appears CRMC No to be no merit and substance in the petition. The petition entails dismissal and is, accordingly, dismissed.