
(2003) 09 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : Acquittal Appeal No. 24A of 2003

State	Vs	APPELLANT
Mehboob Khan and Others		RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Jammu and Kashmir Criminal Procedure Code, 1989 — Section 253, 435

Citation : (2004) CriLJ 1272 : (2010) 3 JKJ 363 : (2004) 3 RCR(Criminal) 878

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : S.C. Gupta, A.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Gupta, J.—Mr. S. C. Gupta. learned Additional Advocate General representing the State, candidly conceded when pointed out at the

outset that the order of discharge passed by the trial Court is not appealable order and only Revision lies for this order u/s 435 of the Code of

Criminal Procedure. Mr, Gupta prayed that the Acquittal Appeal be treated as Revision. The prayer was allowed.

2. After hearing Mr. S. C. Gupta, learned Additional Advocate General, and on going through the order impugned in Revision, I do not find any

infirmary, irregularity or impropriety necessitating interference in Revision. The allegations against the accused enumerated from record in brief, are

that Mohd Din Banday while posted as Range Officer, Dudu, falsified the official record in respect of the forest land located at Patnitop with the

intention to cause wrongful loss to the Government and occasion wrongful gain to Avtar Krishan and Romesh Chander, owners of Hotel under the

name and style Green Top at Patnitop, whereas Mehboob Khan, Patwari (accused

No. 1) and Trilok Chand, Girdawar (accused No. 2) are alleged to have changed the entry in the Revenue record pertaining to Survey No. 117 to the extent of four kanals on 15-5-1985 from 'Maqbooza Mahkma Janglaat' to 'Mahkma Maal Barai Patwarkhana'. This change of entry by accused Nos. 1 and 2, according to the prosecution, is in conspiracy with Tehsildar, Manohar Lal Sharma (accused No, 3). The trial Court after scanning the material available on record assembled by the prosecution during investigation including First Information Report, statements of witnesses recorded u/s 161, Cr. P.C. and report u/s 173, Cr. P.C. besides documents referred thereto, found that change of entry by Girdwar and Patwari stated to be in conspiracy with Tehsildar, Manohar Lal Sharma, accused No. 3, from 'Mehkma Janglaat' to 'Mehkma Maal' could not be said to be with any criminal intention as both the Departments belong to the State. The Trial Court further found that such a transfer may be without obtaining orders from the superiors, but the change could not be said to be with criminal intention. It was further found that the Hotel has been constructed by Avtar Krishan and Romesh Chander, on the validly purchased land, a fact which is not disputed by the prosecution. This land is stated to have been purchased on 30-3-1989. If that be the position, how a change in the entry in the year 1985 by Girdwar and Patwari at the instance of Tehsildar could be contemplated to confer wrongful benefits to Avtar Singh and Romesh Chander, when the land was purchased by them for Hotel purpose vide Sale Deed of 30-3-1980. The Trial Court further found from the record that a path from the circular road up to the Green Top Hotel existed much prior to its construction. Tehsildar only recommended for permission to develop that road and sent the report of Chief Executive Officer, Patnitop Development Authority. This position was clearly elicited with regard to the existence of old path from circular road to Hotel Green Top much prior to the construction of the Hotel. This further shows that from Ramgarhri road, a path leads to Hotel Green Top and on its one side is the land belonging to Avtar Krishan and Romesh Chander, and on the other side is that of Mulkh Raj Mahajan. The allegations, of the prosecution that in fact there existed no path from the circular road to Hotel Green Top and it was provided by Patwaris (accused No. 1) in collusion with Tehsildar

and Range Officer, to the Hotel which did not exist earlier, is contrary to the record gathered during investigation by the prosecution. It was further found by the learned Sessions Judge that the evidence collected during investigation, even if accepted as it is without there being any rebuttal, no prima facie offence is disclosed against the accused, and consequently, discharged the accused vide order dated 19-4-2003. The view expressed by the learned Sessions Judge, in my opinion, is the view to which no exception can be taken.

3. For what has been stated and discussed above, I do not find any merit in this Revision and is accordingly dismissed.