

(2022) 10 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Criminal Appeal (AS) No. 14 Of 2019

State Th. Vigilance Organization Kashmir

APPELLANT

Vs

Ghulam Jeelani Khan And Others

RESPONDENT

Date of Decision : 11-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
Jammu And Kashmir Prevention Of Corruption Act, 1949 — Section 5(1)(d), 5(2)
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 368, 420, 467, 468, 471
Prevention Of Corruption Act, 1988 — Section 5(1)(d), 5(2)
Code Of Criminal Procedure, 1973 — Section 342, 378, 384
Code Of Criminal Procedure, 1989 — Section 417
Indian Penal Code, 1860 — Section 26
Evidence Act, 1872 — Section 114

Citation : (2022) 10 J&K CK 0008

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Asifa Padroo, Mir Suhail

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1 Instant appeal is directed against judgment dated 28.03.2019 passed by the Special Judge Anti Corruption (Additional Sessions Judge), Anantnag (hereinafter referred to as the 'trial Court') whereby in a case arising out of FIR No. 17/1990 for offences under Section 5(2) of J&K P.C Act and Sections 467, 468, 471 read with Section 120-B RPC, the respondents/accused have been acquitted of the charges. Before coming to the grounds of appeal, let me give a brief background of the facts leading to filing of the instant appeal.

2 As per the prosecution case, Deputy Commissioner, Anantnag had, vide his communication No. 1098/Misc dated 18.01.1989, written to the General Administrative Department that some persons have produced a photo copy of

SRO 412 dated 27.08.1984 whereunder certain villages of Anantnag and Kupwara districts have been shown as backward areas, whereas in the original SRO 412 dated 27.08.1984 issued by the GAD, these villages have not been declared as backward areas. This information was forwarded by the Secretary to the Government, GAD to Vigilance Organization Kashmir (hereinafter referred to as 'VOK') in terms of his communication No. GAD(MTG) STS/88-82 dated 15.03.1989.

3. The VOK started the preliminary enquiry into the matter during which it came to fore that the respondent/accused Kuldeep Kumar (hereinafter A3) had produced a photocopy of forged SRO 412 before the Naib-Tehsildar Chatergul, Anantnag, namely the respondent/accused Brij Lal Zutshi (hereinafter A2) for issuance of RBA certificate in favour of his relative, namely Sanjeet Kumar Koul (hereinafter A4). After conducting the preliminary enquiry, the FIR came to be registered and the investigation was set into motion.

4. After investigation of the case, it was found that A4 had applied to Deputy Commissioner, Anantnag for issuance of RBA certificate and the said application was marked by the Deputy Commissioner to Tehsildar Anantnag on 11.05.1987 and on the same day, the Tehsildar Anantnag, respondent Ghulam Jeelani Khan (hereinafter A1) asked the Patwari concerned to submit his report who submitted his report on the same day i.e on 11.05.1987. A report dated 14.05.1987 was also submitted by the Naib-Tehsildar, Chatergul, A3 (now deceased) and as per his report, A4 belonged to village Hardaturoo that was declared as Backward Area. Certain queries were raised by the Deputy Commissioner, Anantnag, but finally, on 18.08.1987, RBA certificate came to be issued in favour of A4. The investigation further revealed that on the basis of the said certificate, A4 had procured admission to MBBS course in Medical College Jammu and later on, RBA certificate issued in favour of the said respondent/accused was cancelled by the Divisional Commissioner, Kashmir.

The matter was also referred to the local police by the Deputy Commissioner, Anantnag and FIR No. 124/1989 for the offences under Sections 468, 420, 120-B RPC came to be registered with Police Station, Anantnag. It was also revealed during investigation that A2, Naib-Tehsildar, Cheturgul had recommended issuance of RBA certificate in favour of A4 and reported that he is a resident of village Hardutroo which falls in the backward area. It was also found that A1, the then Tehsildar Anantnag had also recommended the case of A4 for grant of RBA certificate in his favour.

5. After the investigation of the case, it was established that the respondents-accused herein along with respondent/accused A2 (since expired) had, by acting in collusion with each other, fabricated false documents and recommended the case for issuance of backward area certificate to the Deputy Commissioner, Anantnag in favour of the beneficiary, A4 on the basis of which, he got selected in MBBS Course in the year 1987-88 in the Government Medical College, Jammu. Thus, prima facie, offences under Section 5(2) of J&K P.C Act read with Section

467, 468, 471 and 120-B RPC were found made out against A1 to A4. After completion of the investigation, challan was laid before the Court of Special Judge Anti Corruption Sringar. Later on, with the creation of Anti Corruption Court, Anantnag, the challan was transferred to the said Court.

6. In terms of order dated 09.02.2000, charges for the offences under Section 5(1)(d) read with Section 5(2) P.C Act and Sections 467/468/471 RPC read with Section 120-B RPC were framed against all the accused and trial of the case commenced. During trial of the case, A2 expired and the proceedings against him terminated.

7. In the chagesheet, as many as 13 witnesses were cited by the prosecution and all these witnesses have been examined by the trial Court. Besides this, on an application made by the prosecution, two more witnesses, namely PWs Nissar Ahmad Bhat, the then SP VOK and Mohd Yousaf Khan, the then SP VOK were also examined as witnesses by the prosecution. After completion of the prosecution evidence, the incriminating circumstances, appearing in the statements of the prosecution witnesses, were put to the respondents/accused and their statements under Section 342 Cr.P.C were recorded. In their statements, the respondents/accused denied their involvement in the alleged crime and they also entered their defence by examining two witnesses, namely DWs Gh. Mohd ASI and Gh. Hyder Mir, the then Tehsildar, Anantnag as witnesses in defence.

8. The learned trial Court, after going through the evidence and after hearing the parties, came to the conclusion that the charges against the respondents-accused are not proved beyond reasonable doubt and, accordingly, the respondents have been acquitted of the charges in terms of the impugned judgment. It is in these circumstances that the instant appeal has been filed by the appellant-VOK seeking quashment of the impugned judgment of acquittal

9. The impugned judgment has been assailed by the appellant on the ground that the trial Court has acquitted the respondents/accused on flimsy grounds like non-implication of Patwari concerned as an accused. It has been contended that the evidence led by the prosecution clearly proves the charges against the respondents beyond any reasonable doubt and that the trial Court has overlooked the credible and clinching evidence available on record. It has been further contended that the offences under the provisions of J&K Prevention of Corruption Act stand established from the evidence on record and the trial Court, while acquitting the respondents/accused has merely concentrated on the offences under RPC without dilating on the other aspects.

It has also been contended that the learned trial Court has failed to appreciate the fact that the benefit was given to A4 on the basis of a fake SRO and, as such, use of a forged document by the respondents is clearly established in this case.

10. I have heard learned counsel for the parties and perused the impugned judgment, grounds of appeal and the trial Court record.

11. Before coming to the grounds raised in the memo of appeal, it would be apt to notice the law relating to the scope of the power of this Court while dealing with an acquittal appeal in terms of Section 378 of Central Cr.P.C (corresponding to Section 417 of J&K Cr.PC).

12. In *Atley vs. State of U.P*, AIR 1955 SC 807, the Supreme Court while discussing the scope of appeal against judgment of acquittal, has observed as under:

“5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In Our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417, Criminal P. C. came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

It has been laid down by this Court that it is open to the High Court on an appeal against an order of acquittal to review the entire evidence and to come to its own conclusion, of course, keeping in view the well established rule that the presumption of innocence of the accused is not weakened but strengthened by the judgment of acquittal passed by the trial court which had the advantage of observing the demeanour of witnesses whose evidence have been recorded in its presence.

It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal”.

13. In *Chandrappa vs. State of Karnataka*, (2007) 4 SCC 415, the Supreme Court has laid down the general principles regarding the powers of the Appellate Court while dealing with an appeal against an order of acquittal. Para (42) of the judgment is relevant to the context and the same is reproduced as under:

“42.From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge:

(i) An appellate Court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded;

(ii) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(iii) Various expressions, such as, 'substantial and compelling reasons', 'good and

sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion;

(iv) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court; and,

(v) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court”.

14. Again in *Murugesan vs. State*, (2012) 10 SCC 383 , the Supreme Court has considered the powers of the High Court in an appeal against acquittal recorded by the trial Court. In the said judgment, it has been categorically held that only in cases where the conclusion recorded by the trial

Court is not a possible view, then only the High Court can interfere and reverse the acquittal to that of conviction. In the said judgment, distinction from that of 'possible view' to 'erroneous view' or 'wrong view' is explained and it has been held that if the view taken by the trial Court is a 'possible view', the High Court cannot reverse the acquittal to that of the conviction.

15. In *Hakeem Khan vs. State of M.P* (2017) 5 SCC 719, the Supreme Court considered the powers of the Appellate Court for interference in cases where acquittal is recorded by the trial Court. In the said judgment, it has been held that if the “possible view” of the trial Court is not agreeable for the High Court, even then such “possible view” recorded by the trial Court cannot be interdicted. It was further held that so long as the view of the trial Court can be reasonably formed, regardless of whether the High Court agrees with the same or not, verdict of the trial Court cannot be interdicted and the High Court cannot supplant over the view of the trial Court.

16. In *Mohan @ Srinivas @ seena @ Tailor Seena vs. State of Karnataka*, (2021 SCC Online SC 1233) , the Supreme Court discussed the scope of provisions contained in Section 378 Cr.P.C. Para (20) of the judgment is relevant to the context and the same is reproduced as under:

“20. Section 378 CrPC enables the State to prefer an appeal against an order of acquittal. Section 384 CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the

accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. Article 21 of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal”.

17. Recently, in the case of Jafarudheen and others vs. State of Kerala, 2022 SCC Online SC 495 , the Supreme Court has held that while dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The Court observed that the reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the trial Court rendering acquittal. It was further observed that the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

18. From the foregoing analysis of law on the subject, it is clear that while deciding an acquittal appeal, the High Court has to bear in mind that there is a double presumption of innocence in favour of the accused. First, because of the fundamental principles of criminal jurisprudence and the second that he has been pronounced innocent by the trial Court. It is also clear that if two reasonable conclusions are possible on the basis of evidence on record, the Appellate Court should not disturb the findings of the trial Court as regards the acquittal of the accused. However, the appellate Court has full powers of reappraisal and reconsideration of the evidence led before the trial Court and if it finds, upon reappraisal of evidence on record, that the findings of fact recorded by the trial Court are perverse or the same have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material, the judgment of acquittal can be reversed and converted into one of conviction. With this legal position in mind, let us now proceed to analyze the material on record.

19. As per the prosecution case, the respondents-accused have connived with each other in procuring a Backward Area certificate in favour of A4 on the basis of a forged SRO. The respondents/accused have been charged for offences under

Section 5(1)(d) read with Section 5(2) of P.C. Act and Sections 467, 468, 471 RPC read with Section 120-B RPC.

20. Section 467 of RPC makes the offence of forgery of a valuable security, will or an authority to adopt a punishable offence. In the instant case, the document alleged to have been forged is neither a valuable security, nor a will and it is also not an authority to adopt. Therefore, the said offence is not made out against the respondents/accused. So far as the charge for offence under section 468 RPC is concerned, it relates to forgery for purpose of cheating. The provision reads as under:

"468. Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine"

21. From a bare perusal of the aforequoted provision, it becomes clear that in order to prove the charge for offence under Section 368 RPC, the prosecution has to prove the following ingredients;

(i) The document in question is forged;

(ii) the accused forged the document, and;

(iii) the accused did forge the document intending that the forged document would be used for purpose of cheating.

22. In the instant case, it is not the case of the prosecution that the respondents/accused have forged the SRO which is subject matter of the instant case. Even during trial of the case, the evidence led by the prosecution does not establish that the respondents were, in any way, connected with committing forgery of the document in question. What the evidence on record proves is that the document in question, which is a photocopy, does not correspond to the actual SRO bearing No. 412 dated 27.08.1984.

23. PW-2 Abdul Aziz Reshi, the then Dy. Secretary, GAD, whose signatures are purported to be appearing on the SRO which is subject matter of the instant case, has stated that the said SRO does not bear his signatures and, according to him, the photocopy of the SRO, which is subject matter of this case, is a forged one. PW-3 Dr. R.L.Dhar, Director FSL, the handwriting expert has, vide his opinion EXPW RL submitted that the signatures on the document in question do not tally with the signatures of PW-2 Abdul Aziz Reshi, but he has not rendered any opinion as to whose signatures are appearing on the document in question, meaning thereby that the person, who has forged the document in question has not been identified by the prosecution either during investigation of the case or upon trial of the case. Therefore, it can safely be stated that there is no evidence on record to show that the respondents/accused have forged the document in question. If that is so, one of the essential ingredients of offence under Section 468 RPC is not established by the prosecution against the respondents/accused.

Thus, they cannot be convicted for the offence under Section 468 RPC as well.

24. The 3rd charge against the respondents/accused is for offence under Section 5(1)(d) read with Section 5(2) of J&K P.C Act. While Section 5(2) prescribes punishment for offence of criminal misconduct, Section 5(1)(d) defines the offence of criminal misconduct. The offence of criminal misconduct as defined under Section 5(1)(d) is made out if a public servant, by corrupt or illegal means or otherwise abuses his position as a public servant for obtaining for himself or for any other person any valuable thing or pecuniary advantage. In the instant case, respondent No.1, the then Tehsildar Anantnag was admittedly a public servant at the relevant time. The allegation against him is that he had recommended issuance of Backward Area certificate in favour of A4 on the basis of a forged document i.e SRO 412 dated 27.08.1984.

25. If we have a look at the evidence on record, the application for grant of Backward Area certificate was submitted initially in the office of Deputy Commissioner, Anantnag. This has been admitted by the Investigating Officer PW-11 Triloki Nath Bhat, Inspector in his cross examination. He has also stated that the said application was marked by the Deputy Commissioner to the Tehsildar (A1), whereafter the Tehsildar marked the application to the Patwari concerned. The Patwari, after recording the statements of Numberdar, Chowkidar and getting the affidavit of Amar Nath Koul, the applicant who happens to be the father of A4 submitted his report to the Naib-Tehsildar concerned (A2), who in turn, submitted his report to the Tehsildar Anantnag (A1). He went on to state that the Naib Tehsildar (A2) in his report indicated that A4 belongs to a Backward Area. It has also come in the statement of the said witness that the Tehsildar (A1) had informed the higher authorities about the forged nature of the SRO and recommended cancellation of the certificate issued in favour of A4 after it came to his notice that the SRO is not correct one. He has also stated that A1 addressed a communication EXPW/MA to the Deputy Commissioner informing him that the SRO is forged. The witness has also stated that the Deputy Commissioner is the Competent Authority to issue the RBA certificate and that during investigation, he could not find out as to what is the role of the Tehsildar in issuance of this certificate.

26. PW5 Mohd Amin Bhat, who was working as Sr. Assistant in the office of A1 at the relevant time has stated that the Deputy Commissioner was the Competent Authority to issue the RBA certificate. He has further stated that the application in this regard was required to be submitted to the Deputy Commissioner, who would seek report from the Tehsildar concerned. In his cross examination, he has stated that role of the Tehsildar in this regard is only that of a reporting agency, who would forward the application to the Naib Tehsildar and after obtaining the report forward the same to the Deputy Commissioner. According to the witness, in the instant case, the application is shown to have been recommended by the Deputy Commissioner to the Tehsildar. He has further stated that vide letter EXPW/MA, A1 had recommended to the Deputy Commissioner for cancellation of

the RBA certificate and registration of a criminal case and on the basis of this letter, the Deputy Commissioner vide his letter dated 25.02.1998 asked the SSP Anantnag to register a case.

27. PW 6 Syed Zahoor Din, who was posted as Sr. Assistant, dealing with backward area certificates in the office of Deputy Commissioner in the year 1987-88, has stated that copies of SRO are available in the DC Office and it is the Deputy Commisisoner, who is competent to issue the RBA certificate .

28. From the above evidence on record, it is clear that the application for grant of backward area certificate in favour of A4 was not submitted in the office of A1, but the same was submitted in the office of Deputy Commissioner, Anantnag. Whatever documents were annexed to the said application, the same were also submitted in the office of Deputy Commissioner, Anantnag. So far as the Statutory Rules and the Orders are concerned, copies thereof were available in the office of Deputy Commissioner, Anantnag as has been confirmed by PW 6 Syed Zahoor Din dealing assistant of the DC office in his statement.

29. Thus, it was the duty of the scrutinizing officials posted in the office of Deputy Commissioner, Anantnag as also the duty of the Deputy Commissioner concerned to ascertain as to whether a particular SRO is genuine or not. The obligation to ascertain whether a particular village has been declared as a backward area in terms of a legally promulgated order also lies upon the office of the Deputy Commissioner. The Field Agencies are only required to submit a report as to whether a particular applicant is a resident of an area of which he claims to be a resident. The field agencies are also required to ascertain as to whether an applicant falls within the income and other criteria prescribed for issuance of an RBA certificate. The question whether a particular area falls within a backward area can easily be verified by the Deputy Commissioner by obtaining a report from the concerned officials of his office along with a copy of the relevant SRO. It has come in the evidence on record that the Tehsildar was only a reporting agency and the said officer after collecting the requisite report from his subordinate field agencies submitted the same to the Deputy Commissioner, who was the Competent Authority to issue the certificate.

30. In the instant case, what A1 has done, as per the evidence on record, is that he, after receiving the application from the Deputy Commissioner, Anantnag, has endorsed the application to the field agencies i.e Naib Tehsildar and the Patwari concerned, who, in turn, submitted their report and thereafter the report was again sent by respondent No.1 to the Deputy Commissioner Anantnag. In fact, the evidence on record shows that as soon as A1 came to know about the dubious nature of the SRO, he addressed a letter EXPW-MA to the Deputy Commissioner bringing this fact to his notice. It is on the basis of the recommendation made by A1 in the said letter that certificate issued in favour of A4 has been cancelled and a criminal case was registered with Police Station, Anantnag. Thus, from the conduct of A1, it can be inferred that he had no role in procuring the certificate in favour of A4, nor had he connived with the other

accused. The evidence on record shows that A1 has only performed his lawful duties while dealing with the application of A4 and he has not abused his position as a public servant.

31. Apart from the above, it cannot be disputed that the responsibility of A1 in processing a case for grant of RBA certificate was greater than that of the Deputy Commissioner, the issuing authority. As already noted, it has come in the evidence on record that copies of all SROs were available in the DC office and as such, it was the responsibility of the Deputy Commissioner to ascertain the genuineness of the SRO in question. The Deputy Commissioner has not been made an accused and even the dealing assistants of his office have not been made the accused, then how come, the responsibility for issuing the certificate can be fastened upon A1 alone who, as per the evidence on record, was neither an issuing authority nor the SROs were available in his office. In case every official/officer who has dealt with the case is to be made as accused irrespective of their roles, then the Patwari, the dealing assistants of DC's office and the Deputy Commissioner should have been impleaded as the accused. The Tehsildar cannot be made a scape goat by letting the others off the hook. For all these reasons, the charge for offence under Section 5(1)(d) read with 5(2) of J&K P.C. Act also fails.

32. The other offence for which the respondents have been charged is the one under section 471 RPC. It reads as under:

"471. Using as genuine a forged [document or electronic record]

Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document or electronic record"

A perusal of the aforesaid provision reveals that, in order to prove the charge for offence under the aforesaid provision, it has to be established that there was a fraudulent or dishonest use of document as genuine and that the accused had knowledge or reasonable belief that the document was a forged one.

33. In the instant case, as already noted, the SRO, which is subject matter of the instant case, has been established to be a forged one. The prosecution, in order to bring home guilt of the accused for offence under section 471 RPC has not only to establish that the said document was used by the respondents/accused persons and that they knew or had reason to believe that the document is a forged one.

34. It is the case of the prosecution that the forged SRO was annexed by the applicant along with his application for grant of backward area certificate. In this regard, the prosecution has relied upon the statement of PW5 Mohd Amin Bhat who was posted as Sr. Assistant in the office of the Tehsildar at the relevant time. He has stated that the file pertaining to grant of backward area certificate in favour of A4 was received in the office of the Tehsildar from the office of the Naib

Tehsildar concerned and it was accompanying the relevant record, like copies of revenue extracts, State Subject Certificate and copy of the SRO. In his cross examination, he has stated that as per the record, the application was marked by the Deputy Commissioner to the Tehsildar

concerned. He has further stated that he cannot state as to what documents were annexed to the application when it was initially presented before the Deputy Commissioner, Anantnag.

35. PW 6 Syed Zahoor Din, who was posted as Sr. Assistant in the office of Deputy Commissioner, Anantnag, at the relevant time and was dealing with backward area certificates' section, has stated that the documents relating to grant of backward area certificate was forwarded by the Tehsildar Anantnag to the Naib Tehsildar and the application was accompanied by a copy of the SRO. In his cross examination, he has stated that the application for grant of RBA certificate is submitted in the office of the Deputy Commissioner. He has further stated that he does not know whether in the instant case, the application was accompanied by a copy of the SRO. Investigating Officer PW12 Hakim Din has, in his cross examination, stated that he does not know whether the copy of the SRO was submitted by A4.

36. From the foregoing statements of the material witnesses on this aspect of the case, it is clear that the application for grant of backward area certificate was initially submitted in the office of Deputy Commissioner, Anantnag and the witnesses are not sure as to what documents were annexed with the application. Thus, it is not conclusively proved that the application for grant of backward area certificate in favour of A4 was accompanied by the forged SRO. Therefore, the first ingredient for commission of offence under Section 471 RPC i.e use of a forged document by the accused is not proved beyond reasonable doubt.

37. Even if it is assumed that the application for grant of backward area certificate in favour of A4 was accompanied by the forged SRO, the prosecution in order to prove charge for offence under Section 471 RPC, has to further establish that the person, who used the forged SRO, had either knowledge or reasonable belief that it was a forged document. The Supreme\ Court in the case of A.S. Krishnan and others vs. State of Kerala, (2004) 11 SCC 576 while explaining the ingredients of Section 471 IPC has observed as under:

8.The essential ingredients of Section 471 are (i) fraudulent or dishonest use of document as genuine (ii) knowledge or reasonable belief on the part of person using the document that it is a forged one. Section 471 is intended to apply to persons other than forger himself, but the forger himself is not excluded from the operation of the Section. To attract Section 471, it is not necessary that the person held guilty under the provision must have forged the document himself or that the person independently charged for forgery of the document must of necessity be convicted, before the person using the forged document, knowing it to be a forged one can be convicted, as long as the fact that the document used

stood established or proved to be a forged one. The act or acts which constitute the commission of the offence of forgery are quite different from the act of making use of a forged document. The expression 'fraudulently and dishonestly' are defined in Sections 25 and 24 IPC respectively. For an offence under Section 471, one of the necessary ingredients is fraudulent and dishonest use of the document as genuine. The act need not be both dishonest and fraudulent. The use of document as contemplated by Section 471 must be voluntary one. For sustaining conviction under Section 471 it is necessary for the prosecution to prove that accused knew or had reason to believe that the document to be a forged one. Whether the accused knew or had reason to believe the document in question to be a forged has to be adjudicated on the basis of materials and the finding recorded in that regard is essentially factual.

9. Under the IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:

26. "Reason to believe"- A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

10. In substance, what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case.

38. From the foregoing enunciation of law on the subject, it is clear that in the instant case, unless the evidence on record clearly leads to the conclusion that the accused were either involved in forging the SRO in question or they had the requisite guilty knowledge of its forged character when they presented it before the concerned authority, it cannot be stated that they are guilty of the charge for offence under Section 471 IPC. It would be immaterial if, at any subsequent point of time, they came to know of its forged character. Since the evidence on record does not prove the involvement of the accused/respondents in forgery of the SRO, therefore, the prosecution has to establish that the respondents had

the reason to believe that the SRO in question was forged. The same can be inferred from the facts and circumstances peculiar to the instant case.

39. It has come in the evidence on record that on the basis of the SRO in question, the Deputy Commissioner Anantnag had issued a number of backward area certificates in favour of various persons belonging to the same area to which A4 belonged. PW 6 Syed Zahoor Din has admitted in his cross examination that backward area certificate was issued by the Deputy Commissioner in favour of one Ali Mohd Padroo in the year 1987 on the basis of the same SRO. He has, in fact, stated that, in addition to the certificate in question, a number of similar backward area certificates have been issued on the basis of the SRO which is subject matter of the instant case. He has confirmed that backward area certificate in favour of Ali Mohd Padroo was issued prior to the issuance of a backward area certificate in favour of A4. PW 5 Mohd Amin Bhat has stated that prior to issuance of certificate in favour of A4, similar certificates have been issued in favour of Nazir Ahmed Padroo and Satish Kumar on the basis of the same SRO. PW11 Inspector Triloki Nath, who has conducted part investigation of the case has stated that during his investigation, he came to know that the Deputy Commissioner Anantnag has issued many certificates on the basis of the subject SRO. In fact, he has seized the record in this regard vide seizure memo EXP-HD/I. A perusal of the record seized vide aforesaid memo reveals that the certificates in favour of as many as 35 persons have been issued by the Deputy Commissioner, Anantnag on the basis of the SRO in question.

40. From the foregoing evidence on record, it is clear that the SRO which is subject matter of the instant case, was being acted upon by the Deputy Commissioner Anantnag even prior to the issuance of the certificate in favour of A4 which means that the forged SRO was already available in the office of Deputy Commissioner, Anantnag. Since a number of the persons belonging to the area in which A4 was residing had already obtained RBA certificates in their favour on the basis of the aforesaid SRO, as such, A4 or for that matter A3 had no reason to doubt the authenticity of the SRO in question. In fact, as many as 35 persons belonging to the area to which A4 belonged had, on the basis of the SRO in question, obtained RBA certificates. Therefore, the circumstances that have been proved in this case clearly indicate that A4 and A3 had neither knowledge nor they had reason to believe that the document i.e the SRO in question, was a forged one. The prosecution has, therefore, failed to establish this essential ingredient of offence under Section 471 RPC. The charge for said offence as against the respondents, therefore, falls to the ground.

41. Apart from the above, there are various other infirmities and deficiencies in the prosecution case which create dent in the prosecution story. The then Deputy Commissioner, Anantnag, who is the most important person acquainted with the whole case, has neither been cited as a prosecution witness nor has he been examined during trial of the case.. The application for grant of RBA certificate was submitted in the office of Deputy Commissioner, Anantnag. It is only he, who

could have unraveled as to what documents were accompanying the application submitted by A4. The question whether the actual SRO was available in the office of the Deputy Commissioner, Anantnag and as to why the copy of the SRO alleged to have been presented along with the application was not verified by the Deputy Commissioner before issuing the certificate could also have been answered by him only. All these are vital aspects of the case. In the absence of statement of the Deputy Commissioner, Anantnag, these aspects of the case have remained shrouded in mystery. Although, the Investigating Officer when questioned on this aspect of the matter, has stated that the Deputy Commissioner was not available in his office because of his other engagements, yet when during cross examination he was asked to point out as to when he visited the office of Deputy Commissioner in order to record his statement, he could not find any entry in the case diary in this regard, which means that the Investigating Officer has left this aspect of the matter uninvestigated, thereby leaving out a vital aspect of the case uninvestigated.

42. Illustration (g) to Section 114 of Evidence Act provides that the Court shall presume that the evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. This rule is contained in well known maxim 'Omnia praesumuntur contra spoliatores' which means that if a man wrongfully withholds evidence, every presumption to his disadvantage consistent with the facts admitted or proved will be adopted. In *Ramilaben vs State of Gujarat*, CriLJ 2219, the High Court of Gujarat has held that if the evidence which could have thrown light is kept back, adverse inference has to be drawn. In the instant case, as already noted, the Deputy Commissioner as also the Patwari concerned who has appended his report to the application of A4, have neither been cited nor examined as witnesses in this case prompting this Court to draw an adverse inference against the prosecution.

43. There is yet another aspect of the case, which is required to be noticed. As per the material on record, the application on behalf of A4 was signed and submitted by his father Omkar Nath Koul. This is clear from the statement of Investigating Officer PW12 Hakim Din Dy.SP. Sh. Omkar Nath Koul has neither been questioned during the investigation of the case nor has he been cited as a witness. Obviously, his statement during the trial has also not been recorded. The investigation in this regard is also lacking and no reason has been assigned for non-examination of such an important witness. If the case of the prosecution is that the forged SRO was submitted with the application, then the person submitting the application should have been an accused. The fact that the prosecution has not done so, causes further dent to its case.

44 The prosecution has put up a story that the RBA certificate case of A4 was being pursued by A3 who is stated to have made a statement before the Tehsildar Anantnag and also filed an affidavit. It has come in the statement of PW-6 Syed Zahoor Din that the aforementioned accused was accompanied by Nazir Ahmed Clerk at the relevant time who identified him, while making statement in

the office of A1. Nazir Ahmad clerk has neither been questioned during investigation of the case nor has he been cited as a witness in the challan. Obviously, his statement has also not been recorded during trial of the case. By leaving out important persons acquainted with the facts of this case, the investigating agency has not done its job in a fair and professional manner. This has resulted in leaving a number of lacunae in the prosecution case, the benefit of which has to go to the accused.

45. For all the foregoing reasons, the view taken by the learned trial Court that the charges against the accused are not established beyond reasonable doubt, is definitely a possible view which can be taken on the basis of the evidence led by the prosecution in the instant case. Therefore, in exercise of its appellate jurisdiction, it would not be open for this Court to discard the view of the trial Court and substitute any other view in its place. Thus, there is no good ground to interfere with the impugned judgment passed by the trial Court.

46 The appeal lacks merit and deserves to be dismissed.

47. Accordingly, the appeal is dismissed.