

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKHAT SRINAGAR**

Reserved on: 07.10.2023

Pronounced on: 21.10.2023

**OWP No.1448/2014**

**FAROOQ AHMAD LONE**

**...PETITIONER(S)**

*Through: - Mr. M. A. Qayoom, Advocate.*

Vs.

**STATE OF J&K & OTHERS**

**...RESPONDENT(S)**

*Through: - Mr. Mohsin Qadiri, Sr. AAG, with  
Ms. Maha Majeed, Advocate.*

**CORAM:HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

**1)** This writ petition has been filed by the petitioner for quashing the FIR No.42/2007 of Police Station, Vigilance Organization, Kashmir and the Government Order No.22-GAD(Vig.) of 2014 dated 08.08.2014, whereby the sanction to prosecute the petitioner and other official have been granted by respondents No.2 and 3, on the grounds that:

(I) The petitioner has, admittedly, remained posted as Block Officer, Town Handwara from June, 2005 to October, 2009 and during his posting as such, he never hatched any conspiracy. The petitioner received the charge of Handwara Town Block on 14.06.2005 from Ghulam Mohi-ud-Din Bhat, Forester and the record relating to private timber sales depot holders did not figure in the said charge.

During the course of investigation conducted by the Vigilance Organization, Kashmir authorities and Forest Protection Force on

26.05.2007, stocks of deodar round plus sawn to the tune of 3305 cfts as verified tentatively on spot were found neither illicit nor illegal. The stocks were found genuine and correctly reflected in the records but the respondents have processed the case for grant of sanction without perusing the reply submitted by the petitioner to the questionnaire served upon him by the Investigating Officer.

(II) That vide communication dated 23.12.2013, respondent No.5 asked respondent No.2 to grant sanction under Section 5(2) of the Prevention of Corruption Act, Svt. 2006 (hereinafter referred to as “the PC Act”) and Section 161 of RPC against the petitioner and others but the respondent No.2 without examining the communication (supra) has granted sanction on 08.08.2014 for prosecution of the petitioner and others for commission of offences under Section 5(1) (d) r/w Section 5(2) of the PC Act, Sections 467, 471, 201, 120-B of RPC and Section 6(e) of the Jammu & Kashmir Forest Act, which clearly reflects the non-application of mind.

(III) That the respondent Nos.2 and 3 were not legally competent to grant sanction under Section 6 of the PC Act for prosecution of the petitioner and others under Sections 467, 471, 201, 120-B RPC and 6(e) of the J&K Forest Act. The sanction for prosecuting a person under Section 467, 471, 201, 120-B RPC was required to be granted in terms of Section 197 of the Code of Criminal Procedure.

(IV) That the petitioner had not issued any Form 25 for transportation of sawn timber and authenticated dockets (bills) in favour of M/S Three Star Enterprises illegally or improperly. The deodar timber to the tune of 985 cfts for which it is alleged that the petitioner has issued Form 25 has been found to be genuine and not illegal.

2) The response stands filed by the respondents wherein it is stated that that case FIR No.42/2007 under section 5(1)(d), 5(2) of PC Act r/w 120-B, 467, 471 of RPC was registered in Police Station VOK on 17-07-2007 on the allegations that a criminal conspiracy was hatched by Sh. Ghulam Mohiuddin Bhat (Forester) & Proprietor & Manager of a Private Timber Sale Depot/Joinery Mill namely M/S Three Star Enterprises Handwara & the conspiracy was later joined by Sh. Syed Rafique (Range Officer) Rajwar, Sh. Farooq Ahmad Lone (Forester) & Proprietor of Bandsaw Mill Sh. Gh. Rasool Wani. In furtherance of the criminal conspiracy, the accused beneficiary in league with the accused Forest Officials & Proprietor of Bandsaw Mill Sh. Ghulam Rasool Wani dishonestly & clandestinely felled the Green Standing Deodar/Kail trees in different compartments of Forest Range Rajwar and after crushing the logs into sleepers/Joists at the said Bandsaw Mill and after converting into finished joinery items have disposed of a portion of this illicit timber. While as, the accused Forester Sh. Gh. Mohiuddin & Proprietor of M/S Three Star Enterprises Handwara through its Manager Sh. Gh. Hassan Bhat in pursuance to the criminal conspiracy have dishonestly manipulated the records like Receipt/Dispatch Registers of the said

Timber Sale Depot/Joinery Mill in order to accommodate the illicit timber. During investigation of the case, it was revealed that Physical Inspection of stocks of M/S Three Star Enterprises had been conducted by a team of Forest Department on 29-11-2003, 4010 Cft. (1726 Cft round+2284 Sawn) of Deodar Timber were in stock. A check period was selected to arrive at a logical & truthful conclusion in respect of actual sale/purchase of timber in question. Taking the stocks of timber available with M/S Three Star Enterprises on 29-11-2003 i.e. 4010 Cft as opening balance, the legal purchases and sales (disposal) of timber by M/S Three Star Enterprises, during the period 29-11-2003 to 26-05-2007 (date of inspection by Forest Department upto date of spot inspection by VOK) were ascertained. During the course of investigation, it revealed that during the check period i.e. from 29-11-2003 to 26-05- 24007 M/S Three Star Enterprises have made legal purchases of 1322 Cfts. of Deodar Timber when there was opening balance of 4010 Cft. of Deodar Timber with them making total  $(1322+4010)=5332$  Cft. of Deodar Timber. But during the corresponding period, M/S Three Star Enterprises have made sales/dispatches of Deodar Timber/Timber items to the tune of 6317 Cft. which is  $(6317-5332)=985$  Cft. in excess to the legally held stocks. Besides, on inspection by the team of VOK stocks of 3255 Cft. of Deodar were seized from the possession of M/S Three Star Enterprises. There is no account of genuine source in respect of Deodar Timber of 985 Cft. dispatched beyond legally held stocks and there is also no account of genuine source in respect of Deodar Timber of 3255

cft. (seized by VOK on 26-05-2007), making a total of (985+3255-4240 Cft.) which is established as illicit and smuggled from the nearest forest compartments of Rajwar Forest Range by M/S Three Star Enterprises in connivance with concerned officials of the Forest Department. The illicit Deodar Timber of 985 Cft+3255 Cft = 4240 Cft has been evaluated as per the market rate for Rs. 42, 68, 704/ through Chief Conservator of Forests, Kashmir. Investigation of the case has been finalized as proved u/s 5(2) of PC Act r/w 120-B, 467, 471, 201 of RPC, 6(ee) of J&K Forest Act against 06 accused persons including the Petitioner and the case was submitted to Government through Respondent No.05 for grant of sanction for launching prosecution against two in-service accused persons including Petitioner as envisaged u/s 6 of the PC Act.

**3)** It is further stated that the petitioner has remained posted as Forester from June 2005 in Block Office, Handwara, and during his posting, M/S Three State Enterprises have made purchases of deodar timber to the tune of 1322 Cft., when there was 944 Cft of legal stocks of deodar timber held by M/S Three State Enterprises on the joining of the petitioner making total of legal stocks of deodar timber with M/S Three State Enterprises during his tenure as 2266 Cft., whereas the dispatch of deodar timber/timber items by M/S Three State Enterprises during the posting of the petitioner has been 3251 Cft. In this way, the petitioner in furtherance of criminal conspiracy hatched by him along with others has issued Form 25 for transportation of sawn timber and authenticated dockets (bills) of M/S Three State Enterprises for transportation of

illicit/illegal deodar timber/timber items to the tune of 985 Cft (3251-2266). The complicity of the petitioner is established by the fact that the team of Vigilance Organization, Kashmir, in association with the officials of Forest Protect Force has found and seized 2262 Cft. of green timber of deodar from the depot/mill of M/S Three State Enterprises on inspection conducted on 26.05.2007, when no green timber was found purchased legally by M/S Three State Enterprises.

4) It is further stated by the respondents that the sanction for prosecuting the petitioner for commission of offences under RPC and J&K Forest is valid as the provisions of Section 6 of the PC Act, 2006, will have an overriding effect over the general provisions contained in Section 197 of the Cr. P. C, therefore, no separate sanction was required for offences under RPC and J&K Forest Act.

5) Mr. M. A. Qayoom, learned counsel for the petitioner, raised the following three issues:

- (I) That the petitioner was not posted at the relevant time when the checking was conducted on 29.11.2003 and sanction was granted without considering the reply submitted by the petitioner;
- (II) That once the sanction was sought by the respondent No.5 for prosecuting the petitioner for commission of offences under Section 5(2) of the PC Act and 161 RPC, no sanction could have been granted for prosecuting the petitioner for offences

under Section 467, 471, 201, 120-B of RPC and Section 6(ee) of the J&K Forest Act;

(III) That separate sanction was required for commission of offences under RPC and J&K Forest Act;

In support of his contentions, Mr. Qayoom, relied upon the following judgments:

- (I) **R. R. Chari vs. State of UP**, 1962 0 AIR (SC) 1573;
- (II) **Prof. N. K. Ganguly vs. CBI New Delhi**, 2016 0 CrLJ 371;
- (III) **Farooq Ahmad Gillani vs. State of J&K & others** (SWP No.859/2015 c/w SWP Nos.323/2015 and 371/2012 decided on 16.10.2018;

6) *Per contra*, Mr. Mohsin Qadiri, Sr. AAG, submitted that the charge-sheet has been filed against the petitioner and the complicity of the petitioner in the commission of offences is clearly established during the investigation of the case. He further submitted that the sanctioning authority has applied its mind which is evident from the fact that though the sanction was sought by the respondent No.5 for prosecution of the petitioner for commission of offences under Section 5(2) of the PC Act and Section 161 RPC but the sanctioning authority after applying its mind granted sanction for prosecuting the petitioner in respect of the offences under RPC and J&K Forest Act. He further argued that no separate sanction was required for prosecuting the petitioner for commission of offences under RPC and J&K Forest Act.

7) Hear and perused the record.



**8)** Before this court proceeds ahead to examine the issues raised by the petitioner it would be appropriate to take note of the scope for examining the validity of sanction before trial. In **Parkash Singh Badal v. State of Punjab, (2007) 1 SCC 1**, it has been held as under:

"47. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.

48. **The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial.**"

(emphasis added)

**9)** In **Dinesh Kumar v. Airport Authority of India, (2012) 1 SCC 532**, it has been held as under:

**10. In our view, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind—a category carved out by this Court in *Parkash Singh Badal*, the challenge to which can always be raised in the course of trial.**

(emphasis added)

**10)** In **CBI v. Ashok Kumar Aggarwal, (2014) 14 SCC 295**, the Supreme Court has observed as under:



59. Undoubtedly, the stage of examining the validity of sanction is during the *trial* and we do not propose to say that the validity should be examined during the stage of inquiry or at pre-trial stage.

**11)** In **CBI v. Pramila Virendra Kumar Agarwal, (2020) 17 SCC**

**664**, it has been held as under:

**11. Further the issue relating to validity of the sanction for prosecution could have been considered only during trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective.** In that regard, the decision in *Dinesh Kumar v. Airport Authority of India* relied upon by the learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial.

(emphasis added)

**12)** The ratio of the above judgments is that while the issue of absence of sanction can be raised at the threshold but the challenge to sanction on other grounds such as lack of competence to grant sanction, non-application of mind etc. can be raised only during the trial.

**13)** The first contention raised by the learned counsel for the petitioner is that the petitioner was not posted in Block Office, Handwara, on 29.11.2003 and he took charge from Ghulam Mohiuddin Forester on 14.06.2005 and record relating to private timber Sales Depot Holders did not figure in the said charge, as such, he cannot be held liable for any

illegality committed on the said date. The perusal of the charge sheet placed on record by the respondents reveals that the Investigating Officer has levelled the following allegations against the petitioner:

During the posting of Farooq Ahmed Lone forester, the then Block Officer Town Handwara, M/S 3-Star Enterprises have made purchases of deodar timber to the tune of 1322 cft. (162 cft) on 14.07-05; 392 cft on 19-08-06; 294 cft on 13-02-07, 237 cft on 14-02-07 & 187 cft on 15-05-07) when there were 944 cft of legal stocks of deodar timber held by "3-Star Enterprises" on the joining of Sh. Farooq Ahmed Lone-forester, making total of legal stocks of deodar timber with the depot/mill during his tenure as 2266 cft. On the other hand, dispatches of deodar timber/timber items by "3-Star Enterprises" during the posting of Sh. Farooq Ahmed Lone has been 3251 cft (140 cft on 24-06-05; 54 cft 29-06-05, 229 cft on 06-07-05, 66 cft on 26-07-05; 51 cft on 28-07-05 : 203 cft on 27-11-05, 200 cft on 04-12-05; 128 cft on 14.12-05; 250 cft 28-02-09: 250 cft on: 05-03-06, 251 cft on 30-03-06; 370 cft on 16.07-06; 252 cft on 04-08-06; 251 cft on 06-08-06; 377 cft on 08-10-06, 130 cft on 14-05-07; 49 cft on 16-05-07). In this way the official has issued Forms 25 for transportation of sawn timber and authenticated Dockets (bills) of M/S 3-Star Enterprises" for transportation of illicit/illegal deodar timber /timber items to the tune of 985 cft (3251-2266).

From the above figures it has revealed that the forester has reported to the Range Officer about genuineness of stocks beyond the legal stocks to the tune of 985 Cft willfully, fraudulently and same have been authenticated by way of reflecting in his reports and thus facilitated its transportation and disposal by M/s 3-Star Enterprises.

Moreover, the role of the accused in the conspiracy becomes visible after it was found by the team of VOK that 2262 cft Green timber of deodar was available at the depot/mill of M/s 3-Star Enterprises on 26-05-2007 when no green timber has been found purchased legally by M/s 3-Star Enterprises.

**14)** The perusal of the aforesaid allegations reveals that the allegations qua the petitioner pertain to the period when he was posted in Block Office, Handwara as he joined the said office in June 2005. Whatever the defence the petitioner has, he can raise during the trial in the event charges are framed against him. The disputed questions of facts cannot be considered while adjudicating a writ petition challenging the validity of FIR and sanction accorded for prosecution of the petitioner. In view of the above, there is no force in the contention of the petitioner, as such the same is, accordingly, rejected.

**15)** The second contention raised by the petitioner is that once the respondent No.5 vide communication dated 23.12.2013 had sought sanction for prosecuting the petitioner and other officers for commission of offences under Section 5(2) of the PC Act and Section 161 of RPC, the respondent No.3 could not have granted the sanction for prosecuting the petitioner for commission of offences punishable under Section 5(1)(d) read with Section 5(2) of the PC Act, Sections 467, 471, 201, 120-B of RPC and Section 6(ee) of the J&K Forest Act. The argument though appears to be attractive but deserves to be rejected solely on the ground that the sanctioning authority is not supposed to act as a post office as it is expected to apply its mind on the allegations levelled against the delinquent employee and is not bound by the findings of the Investigating Officer. The sanctioning authority has to independently evaluate the material placed before it for the purpose of grant or refusal of the sanction. The respondent No.3 has mentioned in detail the

allegations levelled against the petitioner and other accused and then only the sanction order has been issued to prosecute the petitioner & other co-accused, after due application of mind. Therefore, this contention of the petitioner too is rejected.

**16)** The last contention raised by the petitioner is that separate sanction was required to be granted for prosecuting the petitioner under Ranbir Penal Code and Forest Act, as the respondent No.2 and 3 were not competent to grant sanction for prosecuting the petitioner under the P.C. Act and J&K Forest Act. There is no doubt that a public servant, who is not removable from his office save by or with the sanction of the State Government or the Government of India, is accused of any offence alleged to have been committed by him while acting or purporting to act in discharge of his official duties, cannot be prosecuted without there being any sanction in terms of Section 197 of the Cr. P. C. Sub-section (2) of Section 42 of the J&K Forest Act provides that no Court shall take cognizance of any offence alleged to have been committed by a Forest Officer while acting or purporting to act in the discharge of his official duties except with the previous sanction of the Government. The comparative reading of Section 6(1)(a) of the PC Act, 197 Cr.P.C and Section 42(2) of the J&K Forest Act would reveal that sanction to prosecute a Forester under section 42(2) of J&K Forest Act and 'public servant removable with the sanction of the Government' for commission of offences under P.C. Act can be granted by the Government. The sanction in this case has been granted by the Deputy Secretary to

Government, General Administration Department (Vig.) Civil Secretariat, Srinagar/ Jammu, which is the Government in terms of Rule 12 of J&K Government Business Rules, as were applicable at the relevant point of time. It is not the case where no sanction has been granted and also the petitioner has not disputed the status of the respondent Nos.2 and 3 as the Government. Otherwise also, in *Parkash Singh Badal v. State of Punjab (supra)*, it has been held as under:

**50. The offence of cheating under Section 420 or for that matter offences relating to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.**

Therefore, there is no merit in the submission of the petitioner.

**17)** It would also be apt to take note of the observations made by the Hon'ble Supreme Court of India in "*State of Chhattisgarh v. Aman Kumar Singh, (2023) 6 SCC 559*" which are reproduced as under:

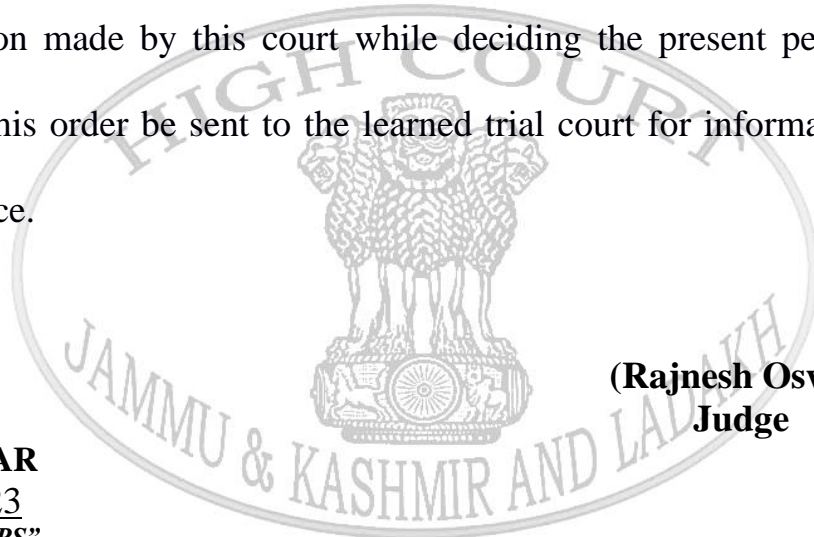
**80. Having regard to what we have observed above in paras 47 to 50 (supra) and to maintain probity in the system of governance as well as to ensure that societal pollutants are weeded out at the earliest, it would be eminently desirable if the High Courts maintain a hands-off approach and not quash a first information report pertaining to "corruption" cases, specially at the stage of investigation, even though certain elements of strong-arm tactics of the ruling dispensation might be discernible. The considerations that could apply to quashing of first information reports pertaining to offences punishable under general penal statutes *ex proprio vigore* may not be applicable to a PC Act offence. Majorly, the proper course for the High Courts to follow, in cases under the PC Act, would be to permit the investigation to be taken to its logical conclusion and leave the aggrieved party to pursue the remedy made**

available by law at an appropriate stage. If at all interference in any case is considered necessary, the same should rest on the very special features of the case.

(emphasis added)

**18)** The judgments relied upon by the learned counsel for the petitioner, are not applicable in the facts and circumstances of the instant case.

**19)** In view of above, the petition is found to be without merit and the same is accordingly dismissed, leaving the petitioner free to agitate his defence before the trial court and the same shall be considered by the trial court without being influenced in any manner in respect of any observation made by this court while deciding the present petition. A copy of this order be sent to the learned trial court for information and compliance.



**(Rajesh Oswal)**  
**Judge**

**SRINAGAR**  
**21.10.2023**  
**"Bhat Altaf, PS"**

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*