

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
ATJAMMU**

Reserved on 28.10.2021

Pronounced on 12.11.2021

CRM(M) No. 131/2021(O&M)

Syed Muried Hussain Shah

.....Appellant/Petitioner(s)

Through :- Mr. G. S. Thakur, Advocate

v/s

Union Territory of J&K and another

.....Respondent(s)

Through :- Mr. Raman Sharma, AAG

Coram: HON'BLE MR. JUSTICERAJNESH OSWAL, JUDGE

JUDGMENT

1. The present petition has been filed by the petitioner for quashing the order dated 14.12.2020 passed by the learned Special Judge Anti Corruption, Jammu (hereinafter to be referred as the trial court) in a challan, titled "State vs Syed Muried Hussain Shah", by virtue of which the petitioner has been ordered to be charged for commission of offences under sections 5 (1) (d), read with section 5 (2) of the Prevention of Corruption Act, 1988 and section 4-A of the Prevention of Corruption Amendment Act, 2014, as also order No. 21-JK-GAD(vig) of 2020 dated 16.03.2018, by virtue of which sanction has been granted by the Government for prosecution of the petitioner.
2. The present petition has been filed on the following grounds:
 - (a) That the order of framing of charge is bad in law as in the instant case, neither any official act required to be done by the petitioner was pending in petitioner's office, nor there is any whisper of demand of

bribe in the entire story followed by the alleged acceptance of bribe money. Therefore, the orders impugned are not sustainable in the eyes of law.

- (b) That the petitioner had become *functus officio* on 06.11.2018 after recommending the case for renewal along with the recommendation of penal interest to the Excise Commissioner therefore, the framing of charge is bad in law.
- (c) That as per the Excise Policy, Rules and Norms, no formal permission for opening of the liquor shop was required to be given by the petitioner in view of the new Excise Policy and further as per Clause 11, the renewal of the license was automatic on depositing of the license fee and other dues, those were deposited on 18.12.2018 itself.
- (d) That the petitioner had already processed the renewal of the license on 06.11.2018 and the story regarding demand and acceptance of rupees two lacs as illegal gratification from the complainant for processing of the renewal of license gets falsified.
- (e) That the charged framed is contradictory to the order impugned.
- (f) That the order granting sanction for prosecution of the petitioner has been passed without application of mind.

3. Response stands filed by the respondents in which factual facts of the case has been narrated.
4. Mr. G. S. Thakur, learned counsel for the petitioner has vehemently submitted that the petitioner stood relieved on 20.12.2018 when the order of transfer of the petitioner was issued and further that the license stood already renewed three days prior to the alleged trap.

5. *Per contra*, Mr. Raman Sharma, learned counsel for the respondents vehemently submitted that the independent witness, PW Sukhdev Singh has categorically deposed with regard to the demand and acceptance of the bribe money by the petitioner and further the bribe money was recovered from the locker/almirah of the petitioner. He further argued that the defence of the petitioner cannot be considered at this stage and the petitioner can prove defence during the course of trial.
6. Heard and perused the scanned record.
7. The facts as they emanate from the charge sheet are that the FIR bearing No. 42/2018 was registered on 21.12.2018 at 1230 hours when the complainant approached the respondents with a written complaint/application, wherein it was stated that the renewal of the license of Dalip Singh Wine Shop at Narwal was pending since 01.05.2018 in the Excise Department and the shop was lying closed due to non-renewal. He further submitted that he had been running from pillar to post for renewal of the license for the last eight months. The petitioner was victimizing, harassing and demanding for a bribe of rupees two lacs for clearing the file. Since his mother was ailing and unable to move, so he was following up the case for renewal of the license. He was paying a sum of Rs. 2 lacs to the petitioner on behalf of his mother under compulsion to avoid any further losses. On the receipt of said complaint, FIR was registered and a trap was laid by Rawail Singh Choudhary Dy. S.P (TLO) along with other police officers and the independent witnesses, namely, Bihari Lal Raina, AE PHE, Rural Division Jammu and Sukhdev Singh, AE PHE, Rural Division, Jammu. After conducting the pre-trap proceedings, the team of the respondents

along with complainant and independent witnesses proceeded towards spot i.e. Panama Chowk and reached there at 1430 hours. On entering the building where the office of the petitioner was located on third floor, the team members took their respective positions on third floor as per instructions conveyed to them during pre-trap proceedings. The accused-petitioner was not present in his office and the complainant conveyed him regarding his arrival in his office on cell phone No. 9469212388, who advised the complainant to wait for him. At about 1530 hours, the petitioner, Deputy Excise Commissioner (Executive) Jammu reached his office and asked the complainant who was standing at the entry of his office to come along with him inside his chamber. Once the complainant entered his office room, the petitioner subsequently took him inside his retiring room attached with his office chamber and shadow witness remained just outside the retiring room. After some time Sukhdev Singh, shadow witness, who listened their conversation at once came out and flashed pre fixed signal to other team members. The trap team swung into motion immediately and entered the office chamber of the petitioner wherein shadow witness-Sukhdev Singh and complainant pointed out towards the petitioner, who by that time had come out from retiring room and was sitting on the chair. Both of them revealed to the trap team that he was the person who demanded and accepted the bribe money from the complainant and kept the bribe money in the almirah lying in his retiring room. Thereafter, the accused was taken into custody and the post trap proceedings were conducted on spot wherein a solution of Sodium Carbonate was prepared in a clean glass tumbler by Sgct. Sushil Kumar whereas the shadow witness Sukhdev Singh was asked to rinse his left

hand fingers in the said colourless solution. On doing so, the colourless solution of Sodium Carbonate remained unchanged. Thereafter, the petitioner was instructed to rinse his left hand fingers in the said solution, on his doing so, the colour of the solution turned into pink which was put in a clean glass bottle and properly sealed and marked. Again a fresh solution of Sodium Carbonate was prepared and Sukhdev Singh was again asked to rinse his right hand fingers in the solution which remained unchanged and then petitioner was again asked to rinse his right hand fingers in the said solution, on his doing so, the said colorless solution turned into pink due to the reasons that had handled the bribe amount before the same was put in his almirah which was in his constructive possession. The said solution was preserved in a small glass bottle and was sealed and marked. The bribe money was recovered from the steel almirah placed in the retiring room of the petitioner.

8. It is further stated in the charge sheet that the file for renewal of the license of the complainant was lying with his dealing Assistant. The said file consisting of 525 leaves along with eight note sheets was seized on spot from Raj Kumar, Senior Assistant posted in the office of the Deputy Excise Commissioner (Executive), Jammu. The petitioner was arrested and after conclusion of the investigation, the charge sheet for commission of offences under sections 5(1) (d) read with section 5(2) of the Prevention of Corruption Act and section 4-A of the Prevention of Corruption Amendment Act, 2014 was filed against the petitioner.
9. The learned trial court after hearing arguments on charge/discharge, charged the petitioner for commission of offences aforesaid vide order impugned.

10. It is evident from the statement of the complainant that the petitioner used the following words for making demands “**DO MERA KHARCHA**”. The statement of the complainant has been corroborated with the shadow witness, namely, PW Sukhdev Singh who also has deposed on the similar lines in his statement under section 161 Cr.P.C.
11. From the aforesaid facts, it is evident that the demand was made, amount was accepted and same was recovered from the almirah of the petitioner. The presence of the petitioner on spot has not been disputed by the petitioner rather it has been argued by Mr. Thakur that the petitioner had gone to the office on 21.12.2018 in connection with his fair well party.
12. Further the factum of the hands wash of the petitioner turning into pink has not been disputed by the petitioner so at this stage, it can be safely inferred that the petitioner received the bribe amount from the complainant that was dusted with phenolphthalein powder.
13. The charge can be framed against the accused even when there is a strong suspicion about the commission of offence by the accused and at the same time, the learned trial court is not expected to merely act as a post office and frame the charge just because challan for commission of a particular offence has been filed against the accused. The learned trial court can sift the evidence brought on record by the prosecution so as to find out whether the un-rebutted evidence placed on record fulfils the ingredients of the offences or not. But at the same time, the learned trial court cannot conduct a mini trial to find out as to whether the accused can be convicted for a particular offence or not.

14. The Apex Court in **Sajjan Kumar v. CBI** reported in (2010) 9 SCC 368 after considering of its various pronouncements has culled out the following principles of law:

“Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

15. In **State of Karnataka v. M. R. Hiremath, (2019) 7 SCC 515**, the Apex Court has held as under:

“25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

“29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

16. The contention of the petitioner that he became *functus officio* as he had already recommended the renewal of license vide order dated 06.11.2018 so he had no more official duty to perform, is belied by the fact that the Technical PA to the Excise Commissioner has addressed a letter dated 18.12.2018 to the petitioner to allow the licensee to resume his business/establishment after deposition of license fee and also for submission of authenticated dissolution deed along with copy of the receipt of prescribed fee to that office for further proceedings, so it cannot be said at this stage that no role was left with the petitioner to perform after he recommended the renewal of license on 06.11.2018. Further the letter dated 19.12.2018 addressed by Jagjeet Kour to the Excise Commissioner reveals that the same has been submitted to the

Excise Commissioner through proper channel along with the enclosures mentioned in the letter including the dissolution of partnership as demanded by the Excise Commissioner vide letter dated 18.12.2018. Further from the statement of PW Raj Kumar, it is evident that the letter dated 18.12.2018 addressed to the petitioner was forwarded to the petitioner who marked the letter in question along with other dak letters on 20.12.2018 and thereafter the dak pad was received by the Vijay Kumar in the afternoon. So till 20.12.2018, the petitioner was dealing with the issue of renewal of the license of the mother of the complainant.

17. Further the contention of Mr. Thakur that the petitioner stood relieved on 21.12.2018, is also a disputed question of fact and as there is nothing on record to demonstrate as to when the order dated 20.12.2018 regarding the transfer of the petitioner was received in his office. Thus, in absence of any such record, this Court does not deem it proper to consider the effect of the transfer of the petitioner vis a vis allegations against the petitioner. The same are the disputed question of facts and petitioner has every right to prove his defence during the course of trial at an appropriate stage. While considering the issue of charge/discharge, the defence that amounts to disputed question of fact cannot be considered as such, the contention of the petitioner has no force.

18. The last contention is with regard to the validity of the sanction. Needless to say that the validity of the sanction can be examined by the trial court during the course of trial in view of the law laid down by the Apex Court in **Central Bureau of Investigation v Ashok Kumar Aggarwal, (2014) 14 SCC 295**, in which it has been held as under:

58. The most relevant issue involved herein is as at what stage the validity of sanction order can be raised. The issue is no more res integra. In *Dinesh Kumar v. Chairman Airport Authority of India*, this Court dealt with the issue and placing reliance upon the judgment in *Parkash Singh Badal & Anr. v. State of Punjab*, came to the conclusion as under:

“13. In our view, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the trial Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial court and giving liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in *Parkash Singh Badal...*” (emphasis supplied).”

19. Viewed thus, the present petition is devoid of merit, as such, the same is dismissed.

(Rajnish Oswal)
Judge

JAMMU
12 .11.2021
Rakesh

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

