

**IN THE COURT OF SPECIAL JUDGE ANTI CORRUPTION KASHMIR
SRINAGAR**

File No. Challan 98/2021
D.O.I :16-6-2021
D.O.D:29-8-2025
CNR NO.JKSG010033702021

STATE through case FIR No. 10/2019 offence u/s 420/201/167/120-B
and 5(1) (d) r/w 5(2) P.C.Act of P/S Crime Branch, Sgr

Through: Spl.PP Mr. Wajahat Jameel

V/S

1. Naeem Akhter S/O Mohammad Syed Andrabi R/O Garoora, Bandipora A/P 05 Umar Avenue Parraypora, Sgr. (Then Chairman JKPCC & Works Minister J&K).
2. Vikar Mustafa Shonthu S/O Lt. Gh. Mustafa Shonthu R/O Hilal Abad Qamarwari, Sgr. (Then GM(K) L/D MD JKPCC A/P R&B Deptt. Civil Sectt. Sgr).
3. Neeru Chadha D/O Lt. J.P.Chadha R/O 58/4 Trikuta Nagar (Then Company Secretary, JKPCC).

.....Accused

Through: Adv. Mr. Altaf Haqani for A-1

Adv. Mr. Faisal Qadri for A-2

Adv. Mr. Feroz Ahmad for A-3

Coram: Surinder Singh

JO CODE JK-00092

ORDER

1. By this order of mine, I will set at rest the controversy regarding the charge / discharge of accused.
2. Facts necessary for the disposal of controversy are summarized herein below:-
3. Government J&K gave direction to SSP CBK vide letter number GAD(Adm) 222/2018-IV dated 3-4-2018 under the signatures of Deputy Secretary to Government GAD Civil Secretariat Jammu (Mr. Girdhari Lal KAS) which reads as under:

The irregularity in the appointment of Mr. Vikar Mustafa Shonthu as managing director should be referred to crime Branch for investigation. It would also examine the role of chairman, the board of directors (BoD), the administrative secretary and company secretary in the matter and take action as per law. Crime Branch is also directed to lodge FIR in the matter.” The fact-finding committee constituted by the government of J&K vide Govt. Order No. 169 GAD of 2018 dated 28-11-2018 to look into the affairs of JKPC in its report submitted to government on 6 March 2019 and found that the appointment of the then managing director Vikar Mustafa Shonthu is illegal and in gross violation of the laid down rules and that the original order issued by the chairman, the agenda items placed before the Board of Directors and the final order issued by the company secretary of JKPC are incongruent to each other and beyond their competence.

4. Consequently FIR 10/2019 offence u/s 5(1) (d) r/w 5(2) PC Act in P/S CBK was registered and investigation commenced.
5. During the course of investigation, the relevant records were seized and statements of relevant witnesses including that of complainant Girdhari Lal Deputy Secretary GAD were recorded and other evidences were collected. It came forth that an order number 01 of 2018 dated 2 March 2013 was issued vide which accused Mr Vikar Mustafa Shonthu, the then General Manager (Kashmir) JKPC was ordered to look after the work of managing director JKPC. Investigation established that Mr. Vikar Shonthu passing the pay scale of 15,000 – 39,100 with GP of 7000 while as the post of MD JKPC was in the pay scale of 37,100 – 67,000 with GP of 8700 (i.e that of chief engineer). Investigation further established that the said order was signed and issued by accused Mr. Syed Naeem Akhter Andrabi, then chairman JKPC and the then Works Minister. The investigation further established that it was beyond the power and competence of Mr Syed Naeem Akhter as chairman JKPC to assign the work of managing director to Mr Vikar Mustafa in terms of article 79 of Article of Association of JKPC, which mandates that managing director shall be directly appointed by the Governor from amongst the directors appointed by him. Article 83 of the article of association states that the Governor shall appoint one of the directors who shall be a whole time employee of the company.

Accused Mr. Syed Naeem Akhter as Chairman could have made a recommendation to the competent authority for giving additional charge of the post of MD JKPCC to the then development Commissioner works or chief engineer Jammu/Kashmir who were all in the rank of chief engineer and already on the board of directors of JKPCC appointed by the government till the post would have been filled on substantive basis. The investigation would further transpire that both the accused chairman Mr. Naeem Akhter and Vikar Mustafa Shonthu in conspiracy with each other got the order number 01 of 2018 dated 2 March 2018 assigning the work of MD JKPCC to Mr Vikar Mustafa Shonthu and subsequent placement of accused Vikar Mustafa Shonthu then general manager as MD JKPCC substantively on the higher post of MD. The administrative department i.e PWD did not process the appointment of Mr. Vikar Mustafa Shonthu as MD JKPCC. Moreover, this order was not even processed on any file of any of the sections of JKPCC.

It also came to be established that accused Ms. Neeru Chadha in furtherance of the criminal conspiracy forwarded a communication to the registrar of companies, Jammu to induce them for according allocation of director identification number (DIN) 2 accused Vikar Mustafa Shonthu as Director of JKPCC despite being fully aware that such a recommendation tantamount to and incorrect representation of facts, since accused Vikar Mustafa Shonthu was neither appointed nor nominated as director of JKPCC by the competent authority i.e the government/Governor of J&K. This was done with dishonest intent to legitimize the illegal order number 01 of 2018 dated 2 March 2018 issued by accused Syed Naeem Akhter. This letter to ROC was written on 2 March 2018 itself i.e. Even before the 93rd meeting of the Board of Directors which was held on 9 May 2018. This clearly indicates the conspiracy amongst all the 3 accused in ensuring illegal appointment of Mr Vikar Mustafa Shonthu as MD JKPCC. The investigation would further reveal that accused No.1 not only assigned the accused-2 the charge of the said post with the mandate to act as Director of the Company but also authorized him to act a Member Secretary of the 93rd BOD to place his own agenda for his placement as MD JKPCC. Accused No.1 thereby assigned the additional charge of a higher post to accused-2 not only for routine/current duties but for

full responsibilities while as accused-2 exercised all administrative, financial, non-statutory and statutory powers under the garb of order issued by accused-1.

It also came to fore during investigation that order issued by accused-1 did not bear any endorsement number, but shown to have been endorsed to the government order file in the endorsement at serial No.18 otherwise pertains to the transfer of 02 Incharge Head Draftsmen of mechanical Engineering Department. It further came to be established that on 2-3-2018 which is the date of the impugned order No. 01 of 2018 regarding look after of MD JKPCC by Mr. Vikar Mustafa Shonthu, 02 Government Orders were issued i.e Order No. 112 and 113 which pertain to transfer of Firdous Tasleem, Head Draftsman, Civil, from JKPCC to Chief Engineering R&B office and Ram Lal I/C AEE for retention in Mechanical Engineering Department. So, based on documentary evidence it is clear that accused persons in league with each other had created a false and fabricated document in the form of order No. 01 of 2018 dated 2-3-2018. This order was never issued on 2-3-2018 from Establishment Section of JKPCC and is stated to have been issued by Chairman from his personal office.

Investigation conducted showed that order was neither specifically addressed nor sent by Chairman JKPCC to JKPCC MD's office and it has not been received by JKPCC MD's office/ Establishment Section as corroborated by seized receipt register and statement of concerned officials. Accused-2 Vikar Mustafa Shonthu also failed to provide original copy of the order No. 01 of 2018 dated 2-3-2018, hence offence u/s 201 RPC was also added against accused-2. Now, after managing the issuance of said order accused-2 fully knowing that he was not Director of JKPCC, convened and attended 93rd meeting of BOD as Member Secretary and prepared, filed and projected how own placement as MD JKPCC s agenda item No. 93.6.4 in the grade /pay scale of Managing Director. The agenda item pertaining to Establishment Section of JKPCC from item No. 93.6.1 to 93.6.7 barring item No. 93.6.4 were prepared by the Establishment Section of JKPCC and projected by Company Secretary (accused-3) for preparation of draft agenda which is evident from the seized records. Though, the agenda item No. 93.6.4 was neither prepared by the Establishment Section nor

projected by them, which clearly implies that the said agenda item was inserted by accused-3 Ms. Neeru Chadha in conspiracy with other accused to unduly benefit Mr. Vikar Mustafa Shonthu for placing him as MD JKPCC.

The investigation would further go to show that accused Vikar Mustafa Shonthu got prepared Minutes of Meeting (MoM) of 93rd BoD from accused Ms. Neeru Chadha then Company Secretary, mentioning therein confirmation of order No. 01 of 2018 dated 2-3-2018 and also fraudulently added the phrase 'placement of Vikar Mustafa Shonthu as MD JKPCC' which amounts to conferring of valuable thing to the accused Vikar Mustafa Shonthu. This fact regarding confirmation of order 01 of 2018 dated 2-3-2018 or placement of Mr. Vikar Mustafa Shonthu as MD has been refuted/rejected by all participating members in 93rd meeting of BoD in their statements. The MoM of 93rd BoD was not circulated amongst the Board Members and none have put their signatures on it as required under rules. AOA JKPCC also prescribes that resolutions in writing (MoM) not signed by all the Directors of BoD are not valid. It is stated that accused Ms. Neeru Chadha being Company Secretary JKPCC dishonestly and fraudulently created a false record of the proceedings of 93rd BoD in the Proceeding Book vis-i-vis agenda item No. 93.6.4 wherein she falsely recorded that BoD confirmed the order No. 01 of 2018 when all the Board Members have categorically denied the same.

It is further revealed from the record seized that MoM of 93rd meeting was retained by the accused beneficiary with dishonest intention and no copy of MoM was sent to any of the participating Board Members. This was done to ensure the concealment of purported decision about item No. 93.6.4 from the participating Board Members. Further, agenda of item No. 93.6.4 was required to be circulated 21 days prior to the meeting but was circulated only one day prior to the meeting which is apparent from the seized record. It is established through investigation that in the 93rd meeting of BoD placement of accused Vikar Mustafa Shonthu as MD JKPCC was strongly opposed/ rejected by all the Board Members. It further states that accused Vikar Mustafa Shonthu in conspiracy with the accused Chairman, issued order dated 11-6-2018 and placed Ms. Tanveera Jan as General Manager (K) thereby

relieving himself from the substantive post of GM (K). The said order mentions that it had the approval of the accused Mr. Naeem Akhter who was also the Minister-in-charge R&B.

The investigation also established that accused Vikar Mustafa Shonthu in violation of Rule-6 (J) of SRO 76 of 1992 dated 30-3-1992 drew HRA during the period from March 2018 to December 2018 and also drew rent amounting to Rs. 2.88 lacs for hired accommodation at Jammu for his residential purpose in the capacity of MD JKPC to which he was not entitled and thus caused pecuniary loss to the state exchequer. The evidence collected during investigation both oral as well as documentary and other corroboratory evidence including opinion of FSL, established the commission of offences under section 5(1) (d) r/w 5(2) PC Act and 420/167/201/120-B RPC against the accused mentioned in the charge sheet.

The Government of J&K vide Order No. 24-JK-GAD (Vig) of 2021 dated 22-4-2021 after considering the material/evidence collected by the investigating agency during the course of investigation and applying its mind to facts and circumstances of case, has accorded sanction to launching of prosecution against accused namely; Naeem Akhter Andrabi and in service accused public servants Mr. Vikar Mustafa Shonthu then GM (K) L/A MD JKPC and Ms. Neeru Chadha then company secretary, JKPC for commission of offences punishable u/s 5(1) (d) r/w 5(2) PC Act and 420/167/201/120-B RPC and consequently laid the charge sheet before this court for its judicial determination.

6. I have heard the arguments advanced at bar by the counsel for the parties and gone through the material on record carefully and gave my thoughtful consideration to the arguments put forth before me.
7. Ld. PP has submitted that there is sufficient material oral as well as documentary which prime facie proves the involvement and commission of offences by the accused persons. It is further submitted that considering the facts emerging from the documents on the record, it cannot be said that the accused are liable to be discharged, since this court is not required to make roving enquiry into the pros and cons of the matter and weighing the evidence as if the trial is conducted. Even the grave suspicion against the accused with regard to the commission of offence attributed to them is

sufficient to charge and proceed against them. While referring the facts of the case on hand, the Ld. PP submitted that A-1 in his capacity as Chairman JKPCC in league with he accused-2 and A-3 by misusing his official position placed the incompetent person (A-2) as MD JKPCC thereby transgressing all the existing rules and regulations governing the appointment of Managing Director of JKPCC. It is submitted that by these acts and omissions on the part of the accused, the state exchequer has also suffered pecuniary loss to the extent of Rs. 2.88 lacs which the accused-2 Vikar Mustafa Shonthu has withdrawn as rent for hired accommodation at Jammu in his capacity as MD JKPCC. According to Ld. PP there is sufficient material on record that prima facie proves the commission of offences by the accused and they are liable to be charge sheeted in the case on hand. **(Reliance placed: Sheikh Abdul Majeed vs. UT of J&K High Court of J&K CRM (M) No. 464/2023 decided on 25-9-2023; CBI, Bank Securities & Fraud Cell vs. Ramesh Gilli and Others. Supreme Court of India & Ramesh Gilli vs. CBI CRM Appeal Nos. 1077-1081 of 2013 with Writ Petition No. 167 of 2015 decided on 23 February, 2016; M. Karunanidhi vs. Union of India decided on 20 February, 1979 AIR SC 898 and G Krishnegowda vs. State of Karnatka High Court of Karnaka at Bengaluru CrL. P.No. 2801/2021 decided on 15 July, 2021).**

8. Ld. Counsel for accused-1 has submitted at the very outset that JKPCC is a Private Company constituted and registered under the Companies Act vide Certification of Incorporation No. 296 of 1965, having its Memorandum and Articles of Association containing regulations for management of the company. It is further submitted by Ld. Counsel that since JKPCC is a Private Company not constituted by the act of Legislature, as such, accused Chairman JKPCC is not a Public Servant as defined in section 21 of Ranbir Penal Code. Ld. counsel further elaborating his arguments has submitted that otherwise also the order of assignment of work of Managing Director JKPCC to accused Vikar Mustafa Shonthu General Manager Kashmir upon the retirement on superannuation of Nayeem Ahmad I/c MD JKPCC Ltd vide order number 01 of 2018 dated 2-3-2018, cannot be construed as an appointment of accused on permanent basis and therefore, there was no occasion for the accused-chairman for violating the Article 83 of Article of

Association which states that Governor shall appoint one of the Directors of JKPCCL to be the Managing Director who shall be whole time employee of the Company. According to Ld. Counsel even the accused-2 Vikar Mustafa Shonthu after the assignment of work of MD JKPCCL by virtue of aforementioned order of accused-chairman, never drew any salary of Managing Director or obtained any charge allowance during the period of his assignment of work as MD JKPCCL. The other limb of the argument of Ld. Counsel was regarding the 93rd meeting of Board of Directors wherein prosecution claims item No. 93.6.4 having been kept in the agenda for placement of accused Vikar Mustafa Shonthu as MD JKPCCL, which agenda was allegedly prepared/ inserted by accused-3 Ms. Neeru Chadha, Company Secretary, JKPCCL in conspiracy with other accused and consequently said agenda item No. 93.6.4 got fraudulently approved/ confirmed by the BOD without involving the Administrative Department or the Establishment Committee of the Administrative Department. Ld. Counsel submitted that there was no denial of the fact that item 93.6.4 for placement of Vikar Mustafa Shonthu as MD JKPCCL was there in the agenda of BOD's meeting, but same got disapproved by the members and only the order No. 01 of 2018 dated 2-3-2018 issued by the accused-chairman was approved/confirmed during the said meeting which fact can be ratified from the Minutes of Meeting prepared and recorded in the Proceeding Book relevant to the said meeting. Lastly, Ld. Counsel submitted that in view of the facts and circumstances of the case and the evidence collected by the prosecution in support of the allegations nowhere satisfy the ingredients of section 5(2) of PC Act and other offences attributed to the accused, and accordingly prayed for discharge of accused from the charge of offences leveled against him. (**Reliance Placed: Firdous Ahmad Tanki Vs. J&K Bank Ltd. And State of J&K 2006 2 JKJ 146; R.S.Nayak Vs. A.R. Antulay (1984) 2 SCC 183; C.K Jaffer Sharief Vs. State (through CBI) Supreme Court of India Cr. Appeal No. 1804 decided on 9-11-2012; Pepsi Foods Ltd and another Vs. Special Judicial Magistrate and others 1997 Legal Eagle (SC) 1387; Selvi J.Jayalalitha Vs. State (2001) CriLJ 3074 High Court of Madras**).

9. Ld. Counsel for accused-2 has submitted that based on the complaint of Vice Chairman JKPCCL, the Governor of J&K constituted a Fact Finding Committee to look into the affairs of JKPCCL. After the

receipt of report of Fact finding Committee, the Deputy Secretary to the Govt. Mr. Girdhari Lal, KAS wrote to the SSP Crime Branch, Srinagar alongwith report of Fact Finding Committee, to investigate the irregularities pointed out in the Fact Finding Committee. However, in the said letter written by Deputy Secretary to Government to SSP Crime Branch Srinagar, only the appointment of accused-2 was reported to be irregular not other irregularities as pointed out in the Fact Finding Committee. It was further argued by the Ld. Counsel that the main thrust of argument of the Ld. Public Prosecutor was and as come out of the contents of charge-sheet itself, that accused-2 Vikar Mustafa Shonthu was appointed as Managing Director JKPCC in violation of Article 79 of Article of Association of JKPCC by the appointing authority (accused-1/Chairman JKPCC) who was never competent to do so and that there were manipulations and fabrication of records done in the 93rd meeting of Board of Directors wherein the action taken by the accused-Chairman was confirmed. Ld. Counsel submitted that since there was no order of appointment issued on 2nd March 2018 by the then Chairman JKPCC nor there was any substantive promotion made in favor of the accused-2, therefore, there was no occasion for the prosecution to say and attribute allegation of misconduct or violation of any rule whatsoever. Further, elaborating his arguments, Ld. Counsel submitted and invited the attention of the court about the language of the Order No. 01 of 2018 dated 02-3-2018 issued by the Chairman JKPCC which specifically states that on retirement on superannuation of Nayeem Akhter, I/c Managing Director JKPCC, Vikar Mustafa Shonthu, General Manager Kashmir, shall look after the work of Managing Director, JKPCC Ltd. According to Ld. Counsel this order cannot be regarded or construed to mean an appointment on permanent basis or for that matter a substantive promotion to the post of Managing Director. To support his arguments, Ld. Counsel further contended that accused-2 has drawn his salary as General Manager and not as Managing Director during those eight months he looked after the work of MD JKPCC. So much so, accused did not even withdraw the charge allowance during the period and no pecuniary benefit obtained by him and in the given facts scenario no offence u/s 5(1) (d) 5(2) PC Act is made out against the accused. Further countering the arguments

advanced by the prosecution, Ld. Counsel while referring to the statements of prosecution witnesses like; PWs Ramzan Malla, Shahnawaz Khan, Masood Mir, Mushtaq Ahmad has submitted that establishment section/ administration section never prepared any agenda for BOD meeting or for that matter provided any relevant records from establishment section of JKPC to the concerned quarter relevant to the said agenda item. It was further submitted that though agenda item number 93.6.4 pertaining to placement of Vikar Mustafa Shonthu GM JKPC as MD JKPC was not agreed by the BOD, but order No. 01 of 2018 dated 2-3-2018 issued by the Chairman, JKPC for assigning of work of Managing Director JKPC to Vikar Mustafa Shonthu was confirmed. Finally, the Ld Counsel submitted that prosecution has miserably failed to prima facie establish the case set up against the accused and the evidences so collected by the investigating agency nowhere constituted the alleged offences, as such, accused is liable to be discharged from the charge of offences leveled against him. **(Reliance placed: P.Sirajuddin Etc Vs. State of Madras AIR 1971 Supreme Court 520).**

10. Ld. Counsel for accused-3 has adopted the arguments made by the Ld. Counsel for accused-1 and in addition he has filed written arguments too wherein he has submitted that accused in her capacity as Company Secretary JKPC has performed her legal duties without any criminal intent or malafide on her part. Merely obtaining Director Identification Number, filing statutory forms and circulating decision of the Board of Directors cannot be treated as conspiracy. She referred to sections 153, 154 of the Companies Act 2013 relevant to the subject. **In case State of Haryana v. Bhajan Lal and M.E. Shivalinga Murthy v. CBI (2020) 2 SCC 768, the Hon'ble Supreme Court of India** has laid down the following principle i.e Merely acting in an official capacity, even if the outcome turns out flawed, does not amount to a criminal offence unless there is clear evidence of conspiracy, personal benefit or dishonest motive. Accused submits that she had no role in MD's assigning of charge decision and no benefit was accrued to her. A prayer was accordingly made for discharging her from the present proceedings.
11. Before advertng to the arguments of counsel for the parties, let me have reference of section 251 (1) Section 251-A(2) and 251-A(3) which are reproduced hereunder:

“Section 251-A(2): If upon consideration of all documents referred to in section 173 and making such examination, if any of the accused as Magistrate thinks necessary and after giving the prosecution and accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he may discharge him.

Section 251-A(3): If upon such documents being considered, such examination if any being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of the opinion that there is ground for presuming that accused has committed an offence triable under this chapter xi of Cr. P.C, which such Magistrate is competent to try and which in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.”

12.A conjoint reading of above referred provisions reveals that Magistrate has to consider the material i.e. documents filed in terms of Section 173 of Cr. P.C and giving the prosecution and the accused a reasonable opportunity of being heard and if Magistrate considers the material sufficient for the charge, he shall charge the accused and if the material is not sufficient, he may discharge the accused.

13.Scope of charge/discharge came to be considered in the case ***Dilawar Balu Kurane V. State of Maharashtra (2002 SCC (Cri) 310)***, wherein their Lordships observed as follows:

“While exercising powers under section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted powers 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 and 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. It was further held hat by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while

giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused. However, their Lordship has held that the Judge would not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

14. Then in case **Soma Chakravarty vs. State through CBI and ors. Reported in 2007 5 SCC 403**, the Apex Court held thus :-

“The settled legal position is that if on the basis of material on record the Court could form an opinion that the accused might have committed an 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. It was further held that at the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true. It was further held in the said judgment that 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. Whether, in fact, the accused has committed the offence, can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exist some materials therefore. Suspicion alone, without anything more, cannot form the basis therefore or held to be sufficient for framing charge.”

15. In case **Sajjan Kumar v. Central Bureau of Investigation reported in (2010) 3 SCC (Cri) 1371**, the Apex Court on considering its previous judgments rendered on the point, has laid down the following principles to be followed while considering the prosecution case for charge:-

“i) The Judge while considering the question of framing the charges under section 227 Cr.P.C 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 material 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.”

16. Now let us discuss the instant case in light of the provisions of Criminal Procedure Code and the law discussed supra and see whether the charge sheet laid before this court discloses the commission of offences by the accused as indicated in the FIR.

17. Accused-1 being Chairman of JKPCG alleged to have made appointment of accused-2 from General manager to the rank of Managing Director JKPCG pursuant to order No. 01 of 2018 dated 2-3-2018 in violation of standing rules and regulations, in connivance with accused-2 Vikar Mustafa Shonthu and accused-3 Ms. Neeru Chadha the then Company Secretary. This stance of the prosecution has been controverted by the accused mainly on the counts that this court lacks jurisdiction to take cognizance and try the accused. Firstly; that JKPCG is a private corporation does not come within the ambit and scope of corporation/body as defined in clause fifteenth of section 21 of Ranbir Penal Code, and Secondly; accused-1 being Chairman of JKPCG was not public servant at relevant point of time as defined in the Prevention of Corruption Act, Svt.2006 (1949 A.D.). For facility of reference Section 2 (2) of PC. Act is reproduced herein below:

2. For the purpose of this Act, the expression “public servant” means a public servant as defined in Section 21 of the State Ranbir Penal Code and shall include:-

a) a person who is or has been a member of either House of State Legislature or a member (including Minister of State) of the Council of Minister:

b) every person who is or has been under the employment of Government whether on permanent, temporary or work-charge basis

c) every officer, servant or member (by whatever name called) of a Corporation or of a corporate or other body which is established by or under an Act of the State Legislature or of Parliament in force in the state.

18. From the above, what transpires is that every person employed by the government on whatever basis is a public servant. Further, any Member of Parliament or State legislature holds an office and authorized thereby to carry out a public duty, are public servants.

Further also, every officer, servant or member of a Corporation or of a corporate or other body which is established by or under an Act of the State Legislature or of Parliament in force in the state, is a public servant.

19. Now, at the outset it has to be seen, if the JKPC of which accused-1 was a Chairman, accused-2 (General manager) appointed as Managing Director and accused-3 a Company Secretary, is or is not a corporation established by or under the state Act and whether the accused persons are public servants within the meaning of section 21 of Ranbir Penal Code. It has been contended that JKPC is a private company incorporated under the Jammu & Kashmir Companies Act XI of 1977 vide certification of incorporation No. 296 of 1965. **Section 12** of Companies Act provides the mode of forming incorporated company-

It says any two or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability.

20. On the other hands, corporation in terms of Section 2 (c) is a body or authority created by a statute/ state. For example; Municipal Corporation Act 2000, Khadi & Village Industries Board Act and Jammu & Kashmir Development Act, 1970 etc, are the Corporations/ Bodies/ Authorities established by and under the Act of the State legislature. In the case on hand JKPC a private company having its Memorandum of Association and Articles of Association therefore, is not a corporation within the meaning of Section 2 (c) PC Act.

21. It further came to be highlighted the difference between the Statutory body/corporation established in reference to section 2(c) PC Act and an incorporated company or a registered society that is; a statutory body owes its existence to a central or state Act having its objects and power denned thereby and whereas a company incorporated under the companies Act stands on a different footing which is regulated by its Memorandum of Association and Articles of Association. Further, the source of power for making rules and regulations in the case of corporation created by Statue is the Statute itself and on the other hand a company incorporated under

the companies Act is not created by the companies Act but comes into existence in accordance with the provisions of Act. It is not a statutory body because it is not created by the Statue. The provisions of the Companies Act which speak of the incorporation of the company do not speak of the incorporation as the creation of a company but they speak of a company being incorporated with a reference to the Memorandum of Association and Articles of Association. Thus there appears clear distinction between the company incorporated under the Companies Act as JKPCC in the instant case and a body or authority created by a statue /state. Therefore, JKPCC a private company incorporated under Companies Act, does not fall within the expression Corporation “established” by or under an Act of the State/Central Government, having no statutory character.

22. Coming to the next contention of Ld. Counsel for accused that accused-Chairman, Vice-Chairman and Managing Director appointed by the Governor from amongst the Directors on deputation to JKPCC a private entity worked in their different capacities were not Public Servants performing any public duties. The organization was neither a government controlled nor was financially assisted by the government of J&K. According to Ld. Counsel, the alleged acts and omissions on the part of the accused were neither illegal nor harmed the public interest in any way and therefore, do not fall under the definition of a public servant. The prosecution on the other hand has submitted that accused-1 Nayeem Akhter Andrabi the Works Minister in the erstwhile state of Jammu & Kashmir was holding the post of Chairman in JKPCC too, and he in his capacity as Chairman JKPCC issued appointment order No.01 of 2018 dated 2-3-2018 in connivance with A-1 & A-2 by virtue of which the accused-2/ Vikar Mustafa Shonthu (GM) was allegedly appointed as Managing Director JKPCC in violation of existing rules and regulations governing the appointment of the Managing Director. Thus accused while discharging their official duties have abused their position as public servant. According to Ld. PP accused/Works Minister and other accused/government employees deputed to JKPCC Ltd would fall under the definition of public servants and if they have acted in that capacity they can be

held liable under the anti-corruption and other relevant laws for their corrupt actions.

23. Now, the question that falls for consideration of this court, is whether, the Chairman (Works Minister) and government employees the Managing Director and Company Secretary whose services were placed at the disposal of an organization-JKPCC which is neither a local authority, nor a corporation established by or under a State, Provincial or Central Act, nor a Government Company, can be treated to be a 'public servant' within the meaning of Section 21 RPC. Since the JKPCC Company registered under the Companies Act, held not to be a Corporation established by or under an Act of the State, it is to be seen if accused can be considered public servant if they perform/ discharge the public duties. The recent judicial interpretations have broadened the scope of the Act to include individuals in positions of public duty within financial assisted or government-controlled entities. It is true that JKPCC is a private company registered under the Companies Act, is not financially aided or controlled by the government of J&K. For a person to be regarded as a public servant within the meaning of section 2(c)--, three conditions have to be fulfilled: the first is the status of the person in the registered company; the second is the nature of the business that the relevant registered company is engaged in; and the third is as to whether the company receives or had received during the relevant period any financial aid from the State government or Central government or from any Corporation established by or under a Central, Provincial or State Act, or authority or body owned or controlled or aided by government or a government company as defined in Section 617 of the Companies Act 1956. All three limbs have to be satisfied for the person to be reckoned as a public servant within the meaning of Section 2(c) (ix) of the said Act.

24. Now, let us see if all the above three conditions for reckoning the accused as public servant have been fulfilled. All the accused being Chairman, Managing Director and Company Secretary were running and managing the affairs of the company JKPCC in their respective capacities. As is explicit from the name of the company "The Jammu & Kashmir Projects Construction Corporation Limited" and the Memorandum of Association, the object of the company was to

carry out the construction activities within and outside the state. The construction activities were normal commercial activities of JKPCC not specific to the company in question but which are otherwise to be done by any private company, having no share holding from the State and all such business activities being common and normal commercial/business activities cannot be termed as public duty or public function. Further, it may be said that the accused top functionaries of JKPCC may have administrative control over the affairs of the company but in no way it can legitimately inferred that there was any financial support or financial domination of the State government over the JKPCC. Thus, having regards to the above facts, it can easily say that all the three conditions are not satisfied to bring the accused persons within the realm of public servants.

25. Further, it has to be seen if the role of the accused being Chairman, Managing Director and Company Secretary involves performing public duties. The crucial aspect is the nature of the company and the duties performed rather than the company's initial private registration. If the government officer's role involves a public duty or if the company is linked to the government in a manner defined by the Act (like being government-aided or government-owned) then the officer will fall under the definition of a public servant. It is now well settled that even if the individual is not a public servant, but if he is discharging 'public duties' by virtue of his office, he is answerable to the State and public and he comes within the ambit of the Prevention of Corruption Act. Public duty is defined under Section 2(b) of the P.C. Act which means a duty in the discharge of which the state, the public or the community at large has an interest. In the context of the Prevention of Corruption Act, 1988, "interest" in "public duty" means that a matter or activity is of concern or relevance to the welfare and good of the general public or the state. It signifies that the action impacts the public interest, requiring that it be performed for the benefit of society, rather than for private gain and that state has a stake in its proper execution. Therefore, what the public duty implies is that it is not merely a private matter but one that affects the public or the community at large. However, if we go by the Memorandum and the Article of Association of the Company and its object and purpose for which it

came into being, it is easily to understand that it is a private company registered under the Companies Act which performs and executes the various business /commercial construction activities which is purely done for private gain. Conversely speaking, it does not perform the duty for the collective welfare of the people, ensuring that schemes and services reach the intended beneficiaries effectively. Further, the duty was never intended to the benefit of poor and downtrodden which could be an example of public interest in discharging duties. The state in instant case had only the vested interest in regulating the behavior of the individuals of the company to prevent corruption and ensuring they are held to a higher standard of conduct.

26. In the back drop of the above facts, there remains no doubt that the JKPCC a non-statutory body and one incorporated under the Companies Act, not financially aided or controlled by the government. A public servant occupies office which renders him public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. The holder of office alone would have the opportunity to abuse or misuse the office. It is the holding of the office which gives an opportunity to use it for corrupt motives. But the accused being Chairman, Managing Director and Company secretary of JKPCC holding offices performing no public duties, as such, cannot held liable under the Act. Because it is the holder of the office alone would have the opportunity to abuse or misuse the office. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. It is only when a public servant is accused of an offence of taking gratification other than legal remuneration for doing or forbearing to do an official act or as a public servant abets offences punishable 161 and 163 or as a public servant obtains a valuable thing for himself or for any other person in any proceeding or business transacted by such public servant, he is said to have misused or abused the power of office held by him as public servant punishable u/s 5(1) (d) of PC Act.
27. Coming to the facts of the case as emerges out from the contents of the charge sheet are that accused-1 the Chairman of JKPCC, issued order No. 01 of 2018 dated 2-3-2018 by virtue of which accused-2 the General Manager JKPCC was allegedly appointed as MD JKPCC

in violation of rules/regulations governing the appointment of Manager Director. Now, let me appreciate this contention of the prosecution that accused-2 was appointed as Managing Director by accused-Chairman JKPC Mr. Nayeem Akhter Andrabi in violation of Article 79 of Articles of Association of JKPC, which inter-alia provides that-

Until otherwise determined by the Governor the number of the Directors shall not be less than seven and not more than eleven from amongst whom these shall be appointed by the Governor, a Chairman, a Vice-Chairman and a Managing Director.

28. From the above article, it is clear that it is the Governor who shall amongst the Directors appoint, Chairman, Vice-Chairman and Managing Director. However, if we see the text and tenor of the order issued by the accused-Chairman vide Order No. 01 of 2018 dated 2-3-2018, it would go to show that accused-Vikar Mustafa Shonthu (GM) was assigned the work of Managing Director JKPC, in view of exigency arisen due to retirement on superannuation of Nayeem Ahmad I/c Managing Director J&K PCC Ltd. The words **'Look after the work of Managing Director'** occurring in the aforesaid order clearly indicates that the order does not purport in any way to promote the accused-2 to the post of Managing Director. However, this order issued by the accused-Chairman, JKPC is being portrayed by the prosecution as appointment/ substantive promotion of accused-Vikar Mustafa Shonthu as Managing Director, JKPC and most probably the argument of the prosecution is hinges around the interpretation of the aforesaid order which they firmly believe to be an appointment order/ substantive promotion of the accused-2 as Managing Director, JKPC, based on which the prosecution has built its case.

29. The arrangement contemplated by the aforesaid order plainly does not amount to a promotion of the accused-2 to the post of Managing Director. The distinction between a situation where a government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get

the salary of the higher post, but gets only that in service parlance is called a "charge allowance". Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. In the case on hand, the accused used to draw his salary against the substantive post of General Manager and even did not get the "charge allowance" during the period he discharged the duties of higher post i.e Managing Director. In the given facts scenario, I do not find force in the plea of prosecution that accused-2 Vikar Mustafa Shonthu (GM) was appointed/ promoted to the substantive post of Managing Director, and I am afraid if the prosecution fails in proving the above said plea, it would be uphill task for them to establish the requisite ingredients of offence of criminal misconduct aided with criminal conspiracy on the part of the accused persons. I am saying so, because the whole case of the prosecution originates and revolves around the so-called illegal appointment of accused-2 as being Managing Director which allegedly came through the order in question issued by accused-Chairman.

30. The other contentions of the prosecution would relate to the allegation against the accused that agenda prepared for Board Meeting and item No.93.6.4 kept in the agenda for placement of Vikar Mustafa (GM) as MD JKPCC came to be inserted in the agenda by accused-3 to be placed in 93rd BoD meeting. It further states that although the above agenda item regarding the placement of accused Vikar Mustafa Shonthu as MD, JKPCC was not agreed and rejected by all the Board Members participating in the said BoD meeting, but accused Vikar Mustafa Shonthu in furtherance of criminal conspiracy, got prepared Minutes of Meeting (MoM) of 93rd BoD meeting from accused Ms. Neeru Chadha, then Company Secretary mentioning therein confirmation of the Order 01 of 2018 dated 2-3-2018 followed by a circular dated 11-6-2018 issued by her fraudulently citing therein the said circular that BoDs of JKPCC Ltd. vide decision taken in 93rd meeting has confirmed the order No. 01 of 2018 dated 2-3-2018 already issued by the accused-Chairman. Further, the MoM of 93rd was not circulated amongst the Board Members and none have put their signatures as required under rules. Also the participating Board Members denied the

confirmation of order No. 01 of 2018 dated 2-3-2018 in the said 93rd BoD meeting.

31. Record on file including the statements of witnesses recorded u/s 161 Cr.P.C would go to show that there are two versions coming up regarding the confirmation of order No. 01/2018 dated 2-3-2018 in the 93rd Board meeting. One set of witnesses including witness Ramzan Malla Administrative Officer, JKPCC, Shah Nawaz Khan DGN (Adm) JKPCC, Masood Ahmad Mir Jr. Asstt. Establishment Section, JKPCC, Satish Razdan Developmental Commissioner (Works) and Mushtaq Ahmad Hajam Head Asstt. Establishment Section, JKPCC, have deposed in one voice that order 01/2018 dated 2-3-2018 issued by accused-Chairman by virtue of which accused-Vikar Mustafa Shonthu was assigned the work of Managing Director was confirmed and he performed the duties as such until he demitted the office on 22-11-2018. The other set of relevant witnesses did not accept the above said order having been confirmed in the 93rd Board Meeting, nor did they sign the Minutes of Meeting prepared in the said meeting. These two different versions amongst the prosecution witnesses raise somewhat suspicion about the true version of the prosecution story. Be that it may be, the fact of the matter is that the order was already carried into effect prior to its confirmation in the Board Meeting and pursuant thereto the accused-2 Vikar Mustafa assigned the work of Managing Director has performed the duties as such until he demitted the office. Needless to say that it was neither the appointment nor the promotion of accused-Vikar Mustafa Shonthu as Managing Director who neither paid any salary nor was released any grade attached to the said post. The order of assignment of charge issued by the accused-Chairman was in the administrative capacity enjoyed by him and if at all and as alleged by the prosecution, the Chairman was lacking power to issue such order, the same could have been an irregularity in the administrative capacity and not illegality and much less than being an offence under section 5(1) (d) r/w 5(2) of Prevention of Corruption Act attributed to the accused-Chairman.
32. The other concern of the prosecution and Board Members participating in the 93rd Board meeting giving dissenting view on the agenda item No. 93.6.4 that they have not signed MoM prepared

regarding the confirmation of the said item. There should be no doubt that agenda item No. 93.6.4 titled placement of Vikar Mustafa Shonthu as Managing director JKPC was placed/projected by the then member secretary before the BOD, however, the item was not agreed by the BOD, but only action taken by the Chairman JKPC in the shape of order 01/2018 dated 2-3-2018 issued earlier was confirmed in the said 93rd Board Meeting. Further, it has to be seen if the MoM prepared regarding the said Board meeting was required to be signed by all the Board Members as questioned by the participating Board Members in their statements recorded u/s 161 Cr.P.C ?

33. It is relevant to note here the **Secretarial Standard on Meetings of the Board of Directors (Issued u/s 118 (10) of the Companies Act, 2013)** which provides-

7.6 The Signing and Dating of Minutes. 7.6.1- *Minutes of the meeting of the Board shall be signed and dated by the Chairman of the Meeting or by the chairman of the next meeting.*

34. Therefore, the grievance of the prosecution that minutes of proceedings were not got signed from all the participating Board Members in 93rd meeting, was not worth consideration in view of above Secretarial Standard applicable to the meetings of the Board of Directors which inter-alia provides the MoM to be signed and dated by the Chairman only and not by all the participating Board Members. Apt to mention here that minutes of proceedings prepared regarding 93rd Board Meeting duly reflected the confirmation of order No. 01 of 2018 dated 2-3-2018. Again, the plea of the prosecution that MoM was to be signed by all the Participating Members in the BoD meeting found not worthy of consideration.

35. Accused-Nayeem Akhter Andrabi besides being Chairman JKPC was working as Works Minister J&K at relevant time. It is difficult to visualize as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the accused-Chairman can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for other accused. If the statements of witnesses examined u/s 161

Cr.P.C would show that no proper notice was given to the Board Members prior to the conducting of 93rd Board meeting or that no agenda item pertaining to the placement of accused-Vikar Mustafa Shonthu as Managing Director prepared by Establishment Section of JKPCC, or that the order impugned order No. 1 of 2018 does not bear any endorsement number etc and in the process, certain rules /procedure not followed or violated or decision taken was absolutely unneeded and superfluous, it is the conduct and the action of the accused which may have been improper or contrary to departmental norms. But to say that same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. The dishonest intention is the gist of the offence under section 5 (1) (d) PC Act which is lacking on the part of accused in the instant case.

36. As far as the argument of prosecution that accused Vikar Mustafa Shonthu in his capacity as MD JKPCC withdrew rent amounting to Rs. 2,88 lacs for hired accommodation at Jammu has caused pecuniary loss to the state exchequer is concerned, it is stated that consequent upon the assignment of charge of Managing Director, accused-Vikar Mustafa Shonthu discharged the duties/responsibilities as such. Though, it is not evident from the contents of the order dated 2-3-2028 issued by accused-Chairman whereby accused-2 was assigned the charge of Managing Director as to whether the assignee was given "full additional charge" or the charge was for "routine duties". However, from the evidence on record in the shape of statements of witnesses it was quite discernible that accused-2 was given the full additional charge of the post of Managing Director who discharged his duties and responsibilities until he demitted the office in the ending November 2018. It is not a disputed fact that accused Vikar Mustafa was not given charge allowance for the period he hold the additional charge of the post of Managing Director for the reasons best known to the authorities concerned, but admittedly he has drawn rent amounting to Rs. 2.88 lacs against the residential house as his official accommodation hired by him at Jammu during the period. Details of payment given by Dy. General Manager JKPCC Ltd; Unit-2, Jammu are available on file. It is alleged that accused-Vikar Mustafa Shonthu simultaneously drew HRA during the period from March

2018 to December 2018. If that being so, it can be easily said that same is not in harmony with the Jammu and Kashmir Civil Services House Rent Allowance and City Compensatory Allowance Rules 1992. According to which, a government employee is generally not entitled to HRA when he is provided with official accommodation. As HRA is for those who incur expenses on rent for private housing. Eligibility for HRA ceases once the government provides official accommodation. Therefore, HRA amounting to Rs. 117014/- stated to be drawn by the accused-2 during the period from March 2018 to November 2018 can be recovered from him if he was otherwise held entitled to the official accommodation at Jammu during the period. Having said so, still there cannot be any nexus between the accused-Chairman and accused-2 Vikar Mustafa Shonthu in the issuance or procurement of order in question, so as to attract the ingredients of section 5(1) (d) r/w 5(2) PC Act which are substantially missing in the case in hand.

37. The other major charge against the accused is u/s 420/ RPC read with section 120-B/RPC. Section 420/RPC is the offence alleged to have committed by the accused in pursuance of the conspiracy. To prove criminal conspiracy u/s 120-B RPC, there must be an agreement between two or more persons to do or caused to be done (i) an illegal act or (ii) an act which is not illegal by illegal means. It is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can only be proved largely from the inferences drawn from acts or illegal omissions omitted by the conspirators in pursuance of a common design. The material on record would nowhere show any iota of evidence direct or circumstantial to satisfy the court that there was a prior meeting of minds between the accused persons. So also, no physical manifestation of such a concurrence extractable from surrounding circumstances, declarations, or the conduct of the accused, was there. An offence of criminal conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference, which is not supported by cogent and acceptable evidence. Again I am not persuaded to hold that there is sufficient material to presume that accused have committed the said offences.

38. In addition to the above charges, the accused were also charged for offence u/s 167 for framing an incorrect document with intent to cause injury and further charged for destruction/ disappearance of document/evidence punishable u/s 201/RPC. Mere mention of sections of law in the charge sheet does not ipso facto prove the charges against the accused. In order to prove the charges against the accused, the prosecution had to collect evidence to substantiate those charges against the accused and so far there is no iota of evidence on record to prima facie prove the above said charges against the accused persons.
39. For charging the accused under any of penal section, there should be some material on record for presuming that the accused has committed an offence for which he is to be charged. Criminal court has not to act as post office and become mouth piece of prosecution and frame charge at the wish of prosecution. Calling a person to face charges without any sufficient evidence would amount to violation of fundamental right. When court is fairly certain that there is no chance of conviction even if all the evidence is considered as it is without cross examination, then court can certainly discharge the accused.
40. Contention of Ld Special Public Prosecutor is not justified by the evidence on file whereby it could be held that the accused are involved in the commission of the offences. The facts of the cases quoted supra by the Ld. Special PP on the point accused being public servants allegedly committed the offences during their discharge of public duties at relevant point of time, found not consistent and relevant to the facts of instant case. Once there is no material found to frame the charges against the accused under the provisions of Special Act i.e Prevention of Corruption Act, the other offences under RPC interconnected with the main offences are bound to be dropped. No prima facie suspicion could be drawn against the accused with which finger could be raised against the accused. Keeping in view the contents of charge sheet, evidence on file and submissions of both the sides besides the law laid down on the subject and above discussion made above, there appears no ground for proceeding against the accused, as such accused named in the charge sheet deserve to be discharged of the charges leveled

against them under sec. 5(1) (d) r/w 5(2) P.C. Act and 420/201/167/120-B/RPC.

41. Consequently, no case for framing of charge against the accused is made out. Therefore, charges under the aforesaid sections of law are found to be groundless. Charge sheet is dismissed. Accused shall stand discharged accordingly. Their bail bonds shall stand discharged. File after due compilation be consigned to records.

Announced:

29-8-2025

Maroofa
Hamid
Shah



Digitally
signed by
Maroofa
Hamid Shah

Surinder Singh
Special Judge Anti-Corruption
Kashmir, SRINAGAR