

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR
(THROUGH VIRTUAL MODE)

PARVEZ AHMAD NAQASH

CRMC 127/2017

...Petitioner(s)

Through: None.

V/s

STATE OF JAMMU AND KASHMIR

...Respondent(s)

Through: Mr. Sajad Ashraf, GA vice Mr. B.A.Dar, Sr.AAG.

Coram: **HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

ORDER

1. The petitioner, in this petition, invokes the inherent jurisdiction of this Court vested under Section 561-A J&K Cr.PC (now Section 482 Cr.PC) for quashing the FIR No. 26 of 2007 registered in Police Station, Vigilance Organization Kashmir under Section 5(2) of J&K Prevention of Corruption Act read with Section 120-B RPC as also the challan pending trial in the court of learned Special Judge Anticorruption, Srinagar ("the trial court") in case titled *State Vs. Parvaiz Ahmad Naqash & Ors.*
2. Briefly stated facts, as projected by the petitioner, in this petition are that vide Government Order no. 436 of PWD/R&B-G dated 10.11.2005, the petitioner was posted as Executive Engineer, Gulmarg Development Authority (GDA), where he joined on 14.11.2004. The petitioner remained on the said post till 2006. It is submitted that keeping in view the emergency involved in the execution of various works going on in the division and to ensure their timely completion, a decision was taken to lay cement

concrete surface for various causeways and other pedestrian footpaths with florinite concrete hardener. It is claimed that since the work was to be executed urgently and mostly under sub-zero conditions, as such, the rapidite was felt to be essential for concrete surfacing. It is with a view to execute the work during winters on war-footing the aforesaid material was purchased but the purchase of the material involved became the subject matter of the investigation in a number of cases in the State including the registration of FIR No. 26/2007, Police Station, Vigilance Organization Kashmir on the ground that florinite concrete hardener and rapidite was purchased at the exorbitant rates and without following the codal formalities. The petitioner in his capacity as Executive Engineer, GDA was roped in the aforesaid FIR.

3. The case after investigation has been challenged before the trial court. Impugned FIR as also the final report submitted by the VOK before the trial court is assailed by the petitioner primarily on the ground that the VOK has not appreciated that the works to be executed were of emergent nature and were required to be executed during winter season. Immediate procurement of florinite concrete hardener and rapidite was necessitated to complete the works before the onset of tourist season. It is submitted that the VOK failed to appreciate that the petitioner and other officers had the power to act in such manner in emergent situation. It is further submitted that there is no evidence collected by the VOK which would indicate that the material was procured for ulterior

consideration or that wrongly gain was conferred upon the accused supplier causing loss to the public exchequer. Furthermore, it is submitted that the case prepared by the VOK against the petitioner is a case of no evidence and, therefore, allowing the trial to continue would be sheer abuse of process of law.

4. On being put on notice, respondent-VOK has submitted detailed status report. It is submitted therein that during the course of investigation and after scrutiny of relevant records it was found that the Executive Engineer, GDA i.e. the petitioner herein had placed the supply order vide No. 6574-75 dated 22.12.2004 for purchase of 6000 ltrs. of rapidite @ Rs.55 per litre in the name of Nazir Ahmad Tramboo (supplier). It was further revealed that on the date of issuance of supply order i.e. 22.12.2004, the receipt of supply of rapidite was also brought on record and an amount of Rs.3,30,000/- was booked against the supply. Vide another order bearing No.7409-13 dated 12.02.2005, 9000 kgs. of florinite concrete hardener @ 45 per kg was purchased from the supplier and the same was brought on record on 25.02.2005. For these supplies, the amount of Rs.4,05,000/- was booked and paid. It was thus, found that the amount of Rs.7,35,000/- was paid to the supplier vide two cheques dated 09.02.2005 and 28.03.2005. Respondent-VOK further claims that it also forwarded the relevant record to FSL, Srinagar for comparison and report. The report of FSL, Srinagar clearly proved that the bills had been prepared by the supplier Nazir Ahmad Tramboo and quotations of other suppliers were fake and written by the accused supplier himself.

5. The investigation further revealed that the Executive Engineer had, wilfully and with ulterior motive, ignored all codal formalities and had directly issued the supply order to the accused supplier. During the course of investigation it was further revealed that the supplier had purchased this material from the distributor M/s Naqeeb Enterprises, Red Cross Road, Srinagar, and the prevalent market rate during the relevant period was Rs. 8.60 per kg. for flaronite concrete hardener and Rs. 18.75 per ltr. for rapidite.
6. As a matter of fact, the Investigating Officer worked out the rate variation on the basis of rates provided by the distributor M/s Naqeeb Enterprises. It was, thus, found that the petitioner and other accused had allowed the contractor the profit of 30% and other charges. There was no competitive bidding nor were general quotations from other suppliers obtained. The investigation further revealed that no such necessity with regard to use of the aforesaid material was projected by anybody at any stage. Upon investigation, VOK found the case proved and, accordingly, presented the challan before the trial court.
7. Heard learned counsel for the respondents and perused the material on record. I am of the view that the petitioner has not made out the case for interference with the trial pending before the trial court in exercise of the inherent jurisdiction vested in this Court by virtue of Section 482 Cr.PC. The Investigating Officer has collected enough evidence to connect the petitioner with the offences alleged in the FIR. The trial court is already seized of the matter. As a matter of fact, this Court vide its order dated 08.06.2017, while issuing notice to the respondents provided that the trial court would proceed in the matter but should not pass final order. It has not

been brought to my notice as to whether the court below has framed charge and proceeded in the matter nor any information has been provided with regard to the stage of the trial.

8. Be that as it may, once the Investigating Officer has collected enough evidence, perusal whereof *prima facie* indicates complicity of the petitioner in the crime registered against him, there is no reason or jurisdiction for this Court to restrain the trial court from proceeding further in the matter or even to pass a final order. In short, the case set-up by the petitioner does not fall within the parameters laid down by the Hon'ble Supreme Court in case "*State of Haryana & ors. Vs. Bhajan Lal & Ors. (1992 Supp(1) SCC 335)*", for interfering with the trial even after the charges in the matter are framed. *Para 103* of the said judgment shall be apt to quote hereunder:-

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

9. The evidence collected by the Investigating Officer does make out the case for proceeding against the petitioner for the offences alleged in the FIR.
10. For the aforesaid reasons, I find no merit in this petition, same is accordingly, dismissed. Trial court shall be free to proceed in the matter and pass final orders, as may be permissible under law.

11. Let a copy of this order be sent to the learned trial court.

12. Disposed of accordingly.

(SANJEEV KUMAR)
JUDGE

Srinagar
30.06.2021
Muzammil.Q

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