

Jasvinder Singh vs State Of J&K on 12 May, 2022

Author: Javed Iqbal Wani

Bench: Javed Iqbal Wani

Sr. No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on : 01.04.2022
Pronounced on: 12 .05.2022

CRM(M) 635/2019
CrLM Nos. 128 & 129/2022
CrLM No. 1468/2019
CrLM Nos. 1680 & 2137/2021
c/w
CRM(M) 587/2019
CrLM 1380/2019

Jasvinder Singh

....Petitioner(s)

Through: - Mr. Abhinav Sharma, Sr. Advocate with
Mr. Abhimanyu Sharma, Advocate
Mr. K. S. Johal, Sr. Advocate with
Mr. Supreet Singh Johal, Advocate

v/s

State of J&K

... Respondent(s)

Through:- Mr. Raman Sharma, AAG

Coram:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE
JUDGEMENT

1. The instant petitions in hand filed under Section 561-A Cr.P.C (Section 482 Cr.PC) have the akin cause of action, urging similar set of facts, thus, are taken up together for final disposal, to forestall multiple, varied and inconsistent conclusions.

2. In both the petitions, petitioners seek quashment of FIR No. 23/2019 dated 09.10.2019, (for brevity „impugned FIR) registered with Police Station, Anti Corruption Bureau, Jammu for offences under Section 5(1) (d) read with Section 5(2) of the J&K Prevention of Corruption Act, Samvat 2006 and Section 120-B RPC.

3. The impugned FIR being relevant and germane herein is in extenso extracted and reproduced hereunder:-

"On the basis of allegation received against Shri B.S.Dua, then MD SICOP on various aspects inter-alia illegal appointment of his nephew S. Jasvinder Singh Dua in SICOP, a detailed verification was conducted to ascertain the actual facts, During probe records of the SICOP, were scrutinized wherein it surfaced that S. Jasvinder Singh Dua had a sudden meteoric rise i.e within a span of (16) years of his service career he rose to the post of MD SICOP. It has further surfaced that S.Jasvinder Singh Dua had initially been appointed in SICOP as JE on 15.01.1998 for a period of three months with the approval of the then MD SICOP Sh. A.K. Khullar. After approximately three years his service as JE were regularized i.e. on 20.04.1998 by the then MD illegally and under pre-designed conspiracy hatched with Sh. B.S.Dua, then GM SICOP who happened to be uncle of the beneficiary Sh. B.S.Dua clandestinely and covertly extended support to the backdoor appointment of S. Jasvinder Singh Dua which is illegal parse,

1. As per further scrutiny of records of SICOP, it has also come on fore that during the period of Sh. B.S.Dua as MD SICOP, his nephew got three promotions i.e. on 10.10.2002, 05.05.2006 and 17.04.2008 in violation of rules and norms governing the subject.

2. Thus, on analysis of records of SICOP coupled with other incriminating circumstances, it is crystal clear that Shri A.K. Khullar, the then MD SICOP and Shri B.S.Dua, the then GM and MD SICOP of the relevant time have by misuse of their position illegally and in a dubious manner facilitated backdoor appointment and subsequent promotions of S.Jasvinder Sing Dua in SICOP who is not only a beneficiary but privy to conspiracy of commission of offence as huge pecuniary advantage has been conferred un him (presently posted as MD Handicrafts corporation) by ignoring due procedure of not putting the post to advertisement, if at all same was available in SICOP.

3. Since, allegations which have sustained during verification disclose commission of criminal misconduct by Shri. A.K. Khullar, then MD SICOP (now retired) and Shri B.S.Dua, then GM SICOP (now retired) vis-a-vis beneficiary conspirator S.Jasvinder Singh Dua (now MD Handicrafts Corporations S&E) under section 5(1)(d) r/w section 5(2) of J&K P.C.Act Svt. 2006, r/w 120-B RPC."

CRM(M) 587/201 (Bopinder Singh Dua vs. State of J&K)

4. Petitioner's case (Facts and grounds)

(i) In the instant petition, the case set up by the petitioner is that while posted as Managing Director, SICOP from 2002 to 2008, he worked with dedication, honesty and sincerity. It is being stated that in the SICOP right from the year 1985 appointments against various posts used to be made initially on adhoc basis and thereafter regularized and further promotions made from time to time on the recommendations of Departmental Promotion Committee in views of merit, qualification, and seniority.

(ii) The nephew of the petitioner herein, namely, Jaswinder Singh, (petitioner in CRM (M) 635/2019) being a qualified Engineer is stated to have also been appointed in the SICOP as Junior Engineer initially on adhoc basis and subsequently, regularized vide Order No. 39-Admn of 1998 dated 20.04.1998, in the pay scale of 6500-10250, against available vacancy, when the petitioner was not holding the post of Managing Director in the SICOP.

(iii) It is being stated that in terms of order No. 109-Adm of 2002 dated 10.10.2002, the said Jasvinder Singh after six years of his regularization of his services along with one Atul Sharma (presently Managing Director, SICOP) came to be placed in the grade of 7300-10800 and subsequently upon approval of the Board of Directors of SICOP/Establishment Committee/Finance Department, J&K Govt. vide order No. 32- Adm of 2006 dated 05.05.2006, came to be promoted as Deputy General Manager s in the grade of 7600-13450 and in terms of order dated 03.10.2007 along with five other employees of SICOP after having been found eligible by the Departmental Promotion Committee came to be recommended for promotion to the post of Divisional Manager/s.

(iv) It is being next stated that on 26.04.2008, the petitioner was transferred from SICOP and after his transfer, the said Jasvinder Singh came to be promoted as General Manager in terms of order dated 18.08.2010 in the SICOP and subsequently, posted as Senior General Manager, SICOP vide order dated 07.01.2013, and then transferred and posted by the Government in terms of order dated 02.06.2014, issued by the Principal Secretary to Govt. Industries and Commerce Department, J&K Government as Managing Director, SICOP.

(v) It is being further stated that one Rakesh Sharma was also appointed as Section Officer on temporary basis vide order dated 04.12.1987 in SICOP and regularized subsequently, on 15.04.1988 as Section Officer/JE and then posted as Managing Director J&K Development Corporation.

(vi) It is being further stated that the said Jasvinder Singh has all along been considered for promotion and consequently, promoted in the SICOP after the regularization of his services along with his co-employees in SICOP, including Sh. Atul Sharma, Sh. M. A. Peer, Sh. Javed Ahmad Rah, Sh. Rajesh Thakur, Sh. Ishtiaq Ahmed Drabu and Rakesh Kumar Sharma. The said Jassvinder Singh is stated to have been promoted from the post of Divisional Manager to the post of General Manager on 20.08.2010 along with above Officers, when the petitioner was not working in the SICOP and the promotions earned by the said Jasvinder Singh are stated to have been made by the SICOP in due course on the basis of his eligibility, competence, capability, experience and seniority without any direct or indirect role of the petitioner therein but with the consent and approval of the Board of

Directors/Government and said Jasvinder Singh is stated to have been posted as Managing Director, Handicrafts Sale and Export Corporation, Ltd. vide Govt. Order No. 01-IND of 2019 dated 03.01.2019, upon being confirmed by the State Administrative Council vide Decision No. 14.01.2019 dated 04.01.2019, issued by the Chief Secretary J&K Govt.

(vii) It is being next stated that the petitioner has been falsely implicated in the impugned FIR, even though, the Managing Director, of SICOP vide his letter No. SIDCP/MD/2018/02 dated 04.04.2018 addressed to the Senior Superintendent of Police (Vigilance) had provided a list of 265 employees of the SICOP having been initially appointed on adhoc basis by various Managing Directors of SICOP having been promoted from time to time and even having risen to the level of Managing Director/s in different Public Sectors Undertaking. In the said list 14 Managing Directors of the SICOP are stated to be appearing with petitioner figuring at serial No. 11 having worked as Managing Director w.e.f. 30.04.2002 to 05.05.2008 with none amongst the said Managing Directors except the petitioner herein having been implicated as one of the accused in the impugned FIR.

(viii) The impugned FIR is being challenged inter alia, on the grounds that the petitioner retired from the post of Director Industries and Commerce, Jammu in the month of November, 2012 and that during the period w.e.f., 30.04.2002 to 05.05.2008, when the petitioner remained posted as Managing Director, SICOP, all the promotions made in the SICOP during his posting as Managing Director were made on the recommendations of the Departmental Promotion Committee and that the allegations leveled against the petitioner in the impugned FIR alleging favoritism is motivated as the said Jasvinder Singh being a qualified Engineer came to be initially appointed on adhoc basis like other appointees in the SICOP and subsequently promoted along with other similarly situated officers, who also rose to the post of Managing Director/s in various different Public Sectors Undertaking and that the said Jasvinder Singh was never given any out of turn promotion or undue promotion during the working of the petitioner in the SICOP and that the petitioner was neither associated with the appointment of the said Jasvinder Singh nor was the competent authority to appoint him or else to promote him and that the said Jasvinder Singh finally came to be posted as Managing Director, Handicrafts Corporation on 03.01.2019 upon being confirmed by the State Administrative Council vide order dated 14.01.2019 and that the said appointment and regularization of the said Jasvinder Singh made and accorded in the year 1998 as Junior Engineer is being made basis for registration of the impugned FIR by the respondents after a gap of more than 21 years.

5. Respondents 'case

(i) Per contra, reply/objections have been filed by the respondent to the petition, wherein it is being stated that the impugned FIR came to be registered upon outcome of a verification conducted by the respondent in respect of the petitioner herein on various aspects inter-alia illegal appointment of his nephew Jasvinder Singh (petitioner in CRM(M) 635/2019), in SICOP and that during the course of the probe into the records of SICOP the said Jasvinder Singh was found to have risen to the post of Managing Director SICOP in a sudden meteoric rise i.e., within a span of 16 years of his service career and that the said incumbent initially got appointed in SICOP as Junior Engineer on 15.01.1998 for a period of 03 months with the approval of the then Managing Director Sh. A. K.

Khullar and was regularized after three months on 20.04.1998 by the said Managing Director under a pre-designed conspiracy hatched with the petitioner herein being General Manager, SICOP, at that relevant point of time having clandestinely and covertly extended support to the backdoor appointment of the said Jasvinder Singh and that during the period the petitioner remained posted as Managing Director, SICOP, the said Jasvinder Singh availed three promotions on 10.10.2002, 05.05.2006 and 17.04.2008 in violation of rules and norms.

(ii) It is being next stated that the then Managing Director Sh. A. K. Khullar and the petitioner herein misused their official position and in a dubious manner facilitated backdoor appointment of the said Jasvinder Singh, without putting the post to advertisement, who not only being a beneficiary is also stated to have been privy to conspiracy of commission of offences and having availed huge pecuniary advantage.

(iii) The then Managing Director Shri, A. K. Khullar and the petitioner herein are stated to have committed criminal misconduct in conspiracy with said Jasvinder Singh and in the process are stated to have committed offences under Sections 5(1) (d) read with Section 5(2) of the J&K Prevention of Corruption Act, Svt. 2006 read with Section 120-B RPC.

CRM(M) 635/2019 (Jasvinder Singh vs. State of J&K)

6. Facts and grounds

(i) The factual position as stated in the instant petition by the petitioner is almost reiteration of the facts stated by the petitioner Bopinder Singh Dua in CRM (M) 587/2019 as such, for the sake of brevity and in order to avoid repetition the said factual background is not repeated and reiterated.

(ii) The case set up by the petitioner in the instant petition is that the impugned FIR has been registered- without disclosing the name of the complainant suggesting that the same has been registered on the allegations received against said Bopinder Singh Dua the then Managing Director (petitioner in CRM(M) 587/2019) on various aspect.

(iii) The impugned FIR is stated to have been got registered against the petitioner herein, his uncle Shri. Bopinder Singh Dua and Shri. A. K. Kullar the then Managing Director of the SICOP at the instance of the persons inimical towards them without there being any allegation leveled against the petitioner.

7. The impugned FIR is being challenged inter alia on the grounds that the same is illegal having been registered arbitrarily wrongly roping therein the petitioner herein and that the impugned FIR has been registered without any justification as a tool to cause, damage and harm to said Bopinder Singh Dua besides the petitioner herein and that the petitioner has been singled out in the matter of registration of impugned FIR when numerous employees had been appointed in the SICOP and various other Government Corporations and Companies initially on adhoc basis, subsequently regularized and promoted as well.

It is being further urged in the grounds that the promotion of the petitioner herein had been made on the basis of existing norms and procedure in the SICOP and that the allegation of commission of the offences covered in the impugned FIR are not made out and that the allegations leveled against the petitioner that he rose to the post of Managing Director, SICOP within a short span of 16 years is factually incorrect when in fact the petitioner in his service span of 10 years got three promotions on account of merit and seniority in the SICOP and the rest of the promotions came to be earned by him while working in the Industries and Commerce, Department that too on the basis of his merit, suitability and seniority and that it is neither alleged in the FIR that the appointment of the petitioner and his subsequent promotions were actuated by dishonest intent or by acceptance of any monetary consideration nor is it alleged that the petitioner had been appointed against the post in question not being possessed of the requisite qualification or else was not entitled to the same.

It is further urged in the grounds that the basic ingredients of criminal misconduct alleged in the impugned FIR are missing and that none of the ingredients of the offences covered in the impugned FIR are coming forth. It is being further urged in the grounds that the impugned FIR is conspicuously silent as to which valuable thing or pecuniary advantage had been obtained by the petitioner or as to what loss the petitioner had caused to the State exchequer and that the same being missing in the impugned FIR, renders it unsustainable.

It is further urged in the grounds that the petitioner was never associated with any enquiry claimed to have been conducted by the respondent and that the impugned FIR is result of malafide and non-application of mind.

It is further urged in the grounds that the impugned FIR is being used as a tool of harassing, victimizing and tarnishing the image and reputation of the petitioner having been registered by the respondent by abuse of the official position.

8. Respondents Case Per contra, in opposition to the instant petition, the respondent has filed objections, wherein it is being stated that the impugned FIR came to be registered in consequence to the findings of a verification process conducted into the allegations leveled in a complaint having found the appointment of the petitioner herein in the SICOP as illegal inasmuch as, the petitioner having arisen to the post of Managing Director, SICOP within a short span of 16 years.

It is being further stated that the appointment of the petitioner in the SICOP, his subsequent regularization followed by his promotions had been illegal made under a pre-designed conspiracy hatched by the then Managing Director SICOP with the General Manager, SICOP being uncle of the petitioner herein and that the verification disclosed commission of criminal misconduct by the then Managing Director, SICOP, the then General Manager and the petitioner herein, constituting commission of offences covered in the FIR. The appointment, regularization and subsequent promotions of the petitioner herein are stated to have been undertaken not in accordance with law but in violation of Recruitment Rules of Service.

Heard learned counsel for the parties and perused the record.

9. M/s Abhinav Sharma and K.S. Johal learned senior appearing counsel/s for the petitioners while making their respective submissions would reiterate the contentions raised and grounds urged in their respective petitions and would pray for quashment of the impugned FIR, whereas Mr. Raman Sharma, learned AAG appearing counsel for the respondent/s would oppose and resist the submissions made by appearing counsel for the petitioners and would pray for dismissal of the petitions, primarily on the ground that the criminal proceedings ought not to be scuttled at the initial stage.

10. Before advertent to the rival submissions of the appearing counsel for the parties, it would be appropriate to refer to the ambit and scope of the inherent power of this Court enshrined in Section 482 CrPC.

11. The law on the question as to when registration of an FIR is challenged seeking its quashing by the accused under Section 482 CrPC what are the powers of the High Court and how the High Court should deal with such questions is fairly well settled by the Apex Court in a long of decisions including in the case titled as State of Haryana vs. Bhajan Lal, reported in 1992 Supl (1) SCC 335, wherein para 102 following principles have been laid down:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police

officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

And in case titled as Dineshbhai Chandubhai Patel vs. State of Gujarat and others, reported in 2018 (3) SCC 104, has laid down following at para 26:-

"26. This Court in State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors. (AIR 1982 SC 949) had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for Three Judge Bench laid down the following principle:

"Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence.

The condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences."

And in case titled as Neharika Infrastructure Pvt. Ltd vs. State of Maharashtra and others, reported in 2021 SCC Online SC 315, has inter alia laid down following principles of law:-

"From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, in the „rarest of rare cases . (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the

police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

12. Keeping in mind the propositions and principles of law laid down by the Apex Court in the judgments (supra) and reverting back to the cases in hand, admittedly the petitioners herein are alleged to have committed offences under Section 5(1) (d) read with Section 5 (2) of the J&K Prevention of Corruption Act, Samvat 2006 and Section 120-B RPC and the said provisions provide as under:-

Section 5(1) (d) and 5(2) reads as under:-

"5. Criminal misconduct. -- (1) A public servant is said to commit the offence of criminal misconduct.(d) if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or Section 5(2): Any public servant who commits any offence of criminal misconduct as referred to in clauses (a), (b) and (e) of sub-section (1), shall be punishable with imprisonment for a term which shall not be less than 2 years but which may extend to seven years and shall also be liable to fine and if he commits criminal misconduct as referred to in clauses (c) and (d) of sub-section (1) shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to five years and shall also be liable to fine."

Section 120-B RPC. reads as under: -

" S.120-B (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

A perusal of the provisions of Section 5 (1) (d) would reveal that the ingredients of the offence are, that the accused should have been a public servant and that he should have used corrupt or illegal means or otherwise abused his position as a public servant and that he should have obtained for himself or for any other person any valuable thing or pecuniary advantage.

The words "abuse of his position as public servant" would connote that the officer does not act as a prudent man, but discards all the normal and statutory rules for accommodating a third party and obtains benefit for him.

The use of words by "corrupt or illegal means" or by "otherwise abusing his position as public servant" that a dishonest element on the part of the public servant while obtaining a valuable thing or pecuniary advantage should exist., The words "otherwise abusing his position as public servant" has to be read in the same context and in the same degree or culpability as the words "corrupt or illegal means convey". It has to be read in juxtaposition with the words "corrupt or illegal means." The words otherwise abusing his position as public servant do not confine merely to misuse his position as a public servant, but such misuse must be with a dishonest mind. (emphasis added) The abuse of position by a public servant thus, in order to come within the mischief of Section 5(1) (d) must necessarily be dishonest for obtaining a valuable thing or pecuniary advantage for himself or for any other person. In other words mere misuse without dishonest intention is not abuse i.e., misusing the position with dishonesty intention would mean abuse and such dishonest intention can be inferred from the facts and circumstances of each case.

13. The facts emerging from the record indisputably tends to show that the petitioner- Jasvinder Singh got appointed in SICOP initially on adhoc basis and subsequently got regularized and promoted from time to time like other appointees in the SICOP, incidentally during the working of his uncle petitioner-Bopinder Singh Dua in the SICOP. Fact also remains that the said appointment and regularization of the petitioner- Jasvinder Singh in SICOP had been made by the officer other than petitioner Bopinder Singh Dua i.e., by the then Managing Director who had made such appointment and regularization on the same lines the other Managing Directors had made in the SICOP from time to time. It is also not in dispute that none of the appointments in the SICOP during that relevant point of time had been made in tune with the constitutional mandate i.e., by advertising the posts. It is also not in dispute that the petitioner - Jasvinder Singh upon his appointment in the SICOP as Junior Engineer was possessed of the qualification required for the

post. The mode and procedure adopted and followed in the SICOP in the matter of making appointments had indeed been irregular, yet it cannot be lost sight of that the appointment of the petitioner - Jasvinder Singh was not such a solitary case.

The necessary ingredients of dishonest intention in making such appointment of the petitioner-Jasvinder Singh or his regularization as well promotions is manifestly not traceable, having regard to the facts and circumstances of the case, even if it may be assumed for the sake of arguments that the said appointment and regularization of the petitioner- Jasvinder Singh had been made by misusing the positions by the then Managing Director. The promotions earned by the petitioner-Jasvinder Singh however, admittedly have been made upon the recommendations of Departmental Promotion Committee and not individually by the said Managing Director in league with the petitioner-Bopinder Singh Dua as is alleged. Thus, it can be safely said that there has not been abuse of position with dishonest intention by the then Managing Director Shri. AK Khullar, or the petitioner Bopinder Singh Dua while making the appointment and regularization of the petitioner- Jasvinder Singh in the SICOP. The missing of said element of "dishonest mind" in the whole case set up by the respondent/s against the petitioners is writ large.

14. It is pertinent to note here that the perusal of the record of the CD File reveals that initially after holding a verification/enquiry in the matter the inquiry officer in a consolidated verification report No. 16/2011, while enquiring into the allegations leveled against the petitioner Bopinder Singh Dua, had submitted a detailed supplementary report dated 05.05.2017 to the Central office providing therein, that the SICOP Service Rules are vague and need to be revisited to provide opportunity of appointment to the deserving candidates, and as such, recommended that an Advisory be sent to the Government for amendment of SICOP Rules pertaining to appointment/regularization and in terms of a final supplementary report submitted upon the review of the verification undertaken by the inquiry officer on 29.01.2019, the allegations leveled against the petitioner Bopinder Singh Dua had been found to be not substantiated except the allegations regarding appointment of the petitioner Jasvinder Singh. However, no material or evidence worth the name seemingly is available on the record in the CD File prima facie disclosing the commission of the offences alleged against the petitioners under Section 5(1) (d) read with Section 5(2) of the J&K Prevention of Corruption Act, Samvat 2006.

15. In so far offence of criminal conspiracy is concerned, law is settled that there must have been an agreement between the persons, who are alleged to have conspired and that agreement should be either for doing an illegal act or for doing by illegal means. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of conspiracy. The leveling of an allegation of conspiracy without mentioning as to how, where and which of the conspirators hatched conspiracy and for what purpose or circumstances warranting inference of existence of conspiracy is not enough to constitute an offence of conspiracy. The FIR should make out a prima facie case of conspiracy against the accused persons, as one cannot have the construction of fine superstructure without a foundation. Neither the impugned FIR nor the record tend to show that the commission of offence of criminal conspiracy by the petitioners.

16. It is also profitable to note here that ever since the registration of impugned FIR, no headway has been made in the investigation from the initial stage of investigation except for securing and obtaining the relevant records from the SICOP, so much so no incriminating material or evidence worth the name exist therein supporting the case set up by respondent/s against the petitioners. The material/evidence collected by the respondent/s initially after registration of the impugned FIR is the only material/evidence available in the CD File, which ex facie demonstrates that the respondents have not been able to bring home the offences alleged to have been committed by the petitioners even though the respondents had been let free by this Court to proceed ahead with the investigation of the case upon filing of the instant petitions by the petitioners, without granting any stay on the investigation.

17. The contention of Mr. Sharma, learned AAG appearing for the respondents that the instant petitions entail dismissal is misplaced and misdirected in view of the aforesaid analysis, more so in view of the following principle of law laid down by the Apex Court in *Neharika's case* (supra) which risking repetition is reproduced hereunder:-

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of *R.P. Kapur* (supra) and *Bhajan Lal* (supra), has the jurisdiction to quash the FIR/complaint; and

18. Having regard to the facts and circumstances of the case and the analysis thereof, the instant case warrants exercise of inherent jurisdiction as the case of the petitioners is found to be covered under following principles laid down by the Apex Court in the *Bhajan Lal's case* (supra):-

"(1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

19. For what has been observed, considered and analyzed hereinabove, the petitions in hand deserve to be allowed and are, accordingly, allowed, while quashing the impugned FIR No. 23 of 2019 dated 09.10.2019.

(Javed Iqbal Wani) Judge Jammu 12.05.2022 Bir Whether the order is speaking: Yes Whether the order is reportable: Yes