

**COURT OF THE 2ND ADDITIONAL MUNSIFF
JUDICIAL MAGISTRATE 1ST CLASS AT SRINAGAR.**

CNR: JKSG03-001802-2016
Date of Institution: 08.08.2016
Date of Order: 27.08.2024

STATE OF JAMMU & KASHMIR

(Through SHO Police Station Sadder in FIR No. 211/2013 U/s 419, 471
of the RPC)

...Prosecution

Through: - Ld. APP Mr. John Mohammad

Versus

Dr. Zahoor Ahmad Tantray S/o Ghulam Ahmad Tantray R/o Kupwara,
doctor ISM.

...Accused

Through: - Adv. Ms. M.A. Peerzada

CORAM: AHTZAZ AHMED
(UID: JK 00268)

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JUDGMENT

1. MEMO OF ACCUSATIONS:

1.1 By way of the present chargesheet, it has been alleged that the accused had committed offences punishable under sections 419 and 471 of the RPC. It is stated that on 30.10.2013, the concerned Police Station had received a communication bearing no. DISM/4618 from the then Director, Indian Systems of Medicine, Dr. Abdul Kabir Dar S/o Mohammad Abdullah Dar R/o Presently at Peerbagh, Srinagar, stating that the accused who is a medical officer, Unani, at the time residing at H.no. 97/A Alamdahar Colony Sirsayed Abad Bemina, Srinagar C/o Sh. Muzaffar Anwar Ganai S/o Mohammad Anwar Ganai, was

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transferred from Unani Dispensary Gulab Bagh to Unani Dispensary Khanaid, Udhampur because of his misconduct.

1.2 It is reported in the letter that the said accused was harassing the officials of the department by filing the RTI applications using different names so that he could escape from the departmental enquiry and could pressurize the officers of the Department. It is then reported in the letter that the department had become suspicious on receipt of the chain of RTI applications on stereotype readymade proforma filed by impersonating different persons. It is then reported in the letter that the accused had filed RTI applications in the name of Sh. Muzaffar Anwar Ganie who happens to be the son of the owner of the house of the said doctor. It is then reported in the letter that the department had become suspicious when the RTI application of Sh. Muzafar Anwar was forwarded to ADMO Srinagar for providing information to the seeker, copy whereof was sent to the said person who on its receipt contacted the department and refused to have sought any such information from the department.

1.3 It is then reported in the letter that similarly one of the RTI applications is in the name of Mohammad Ashraf Ganaie R/o Peth Kanihama against the officers who were conducting inquiry against the accused. It is alleged in the letter that actually the accused herein wanted to escape from the departmental enquiry therefore harassed and caused distress to the officers and the employees.

2. A BRIEF OF THE INVESTIGATION:

2.1 On receipt of the above said complaint, it is stated that the above-mentioned FIR was lodged and matter was first entrusted to SI Mohammad Yaseen. During the course of investigation, a site plan was sketched and statements of witnesses were recorded under rules. It is then reported that initially the case was not admitted however on the recommendations of the higher officials by mutual consent directed for re-investigation in the matter. It is then reported that the relevant documents were obtained from the office of Directorate of ISM and sent to FSL for expert opinion.

2.2 It is then reported that the FSL vide its report no. FSL/43-Doc/Sgr dated 01.06.2015 affirmed the fact that the person who had written the documents marked as Q2 to Q9 had written the documents marked as A5 to A7 and A1 to A3. It is then reported that as per the FSL opinion it is clear that the accused cleverly filed RTI applications using different names in order to get information from the Directorate of ISM although, the said persons were not in need of any such information.

3. FRAME OF THE CHARGE:

3.1 This Court had on 13.03.2019 framed a formal charge against the accused in terms of sections 419 and 471 of the RPC to which, the accused had replied by stating that he is innocent and wants a trial.

4. THE TRIAL: EVIDENCE OF THE PROSECUTION

4.1 The prosecution had listed 10 witnesses in the memo of the chargesheet out of which 7 witnesses were produced before the court. The testimonies of such witnesses are produced in English in the forthcoming paragraphs.

A. PW No.1, Mr. Dr. Abdul Kabir Dar S/o Mohammad Abdullah Dar R/o Presently at Peerbagh, Srinagar

4.2 The witness during his examination-in-chief deposed that he knows the accused present in the Courtroom. The occurrence is of the year 2013 and the month was October. The deponent was posted as Director ISM J&K on the day of occurrence. During those days, a number of RTI files were being filed in the office and the deponent replied them accordingly. The PIO of deponent's office forwarded an RTI application, the information of which was to be obtained from Sub-Office and the Applicant was also provided a copy of that RTI application. Thereafter, the Applicant, whose name is Muzaffar Ahmad Ganai, came to the Office and told that he had not filed any RTI application nor has he signed one. He also stated that he has a tenant in his house namely Dr. Zahoor Ahmad Tantray who receives the replies/answers of RTI applications. It came to fore that the accused had filed the said RTI application in his name (Muzaffar Ahmad Ganai's name) and in this regard, they engaged in an argument as he told the accused that he is misusing his name. In reply, the accused said "I will pay you for it". For further inquiry in the matter, the deponent forwarded a complaint from his office to the SHO concerned for lodgement of FIR. The complaint was shown to the deponent, who read it, same is admitted to be true and correct. The deponent identifies his signature on it, same is marked as EXPW1/1 today. Thereafter, the deponent got his statement recorded. Then it came to fore that the Police have presented the Challan against the accused before the Court.

4.3 During his cross-examination by defence counsel, the deponent deposed that he does not remember the date from which he was working as Director ISM, as the same can be ascertained from records. The accused was posted at ISM in the year 2013, however the working place could only be ascertained from records. The deponent does not know that in the year 2013, a PV/46/2013 was pending regarding the medicine taken from Gulab Bagh Dispensary by Crime Branch Kashmir for inspection. The accused had filed an RTI application for the enquiry which was being conducted against him. The deponent does not remember who was conducting that inquiry. The accused filed the RTI applications against those persons who were conducting his inquiry. The deponent does not remember whether he forwarded a copy of RTI application alongside the complaint to the Police or not. After the lodgement of FIR, the police asked for the records from deponent's office and same were provided to them; however the deponent does not remember today what record was provided to the police because 10-years have passed since then. The Administrative were informed of deponent's inquiry and FIR. The deponent does not know whether any promotion was given to accused or not during the course of enquiry, however same can be ascertained from the records.

All the documents which were asked by the I.O from the office of the deponent were provided to him. It is wrong that despite asking for any document by the I.O from the office, same were not provided to him.

Question: Did your office receive a letter twice from the Police that since you are not providing the documents, the case would be 'Not Admitted'?

Answer: The deponent has no knowledge regarding the same today.

4.4 The FSL was forwarded few documents of the accused from the office itself, as the Police was not investigating anything the matter and a warning was also issued against I.O from the office. The deponent cannot say whether any record(s) of the deponent's office got washed out during the floods of 2014 and cannot say whether any FIR was lodged in this regard or not. The deponent has not seen those documents in the Court today, which were seized by the Police. The deponent perhaps was transferred in the year 2016 from the ISM. The Ayush Doctor's Association Kashmir, in which the accused is self-styled Sr. Vice President, filed an application/petition before Legislative Assembly, where it was decided that since the matter is sub-judice, the committee cannot take any decision. No further questions.

B. PW No. 2. Mr. Muzaffar Ahmad Ganai S/o Mohammad Anwar Ganai R/o Bandipora

4.5 The witness during his examination-in-chief deposed that he knows the accused present in the Courtroom. The occurrence is of the year 2012 or 2013. The deponent is a resident of Bemina Alamdar Colony H.No. 97/A and the accused in the year 2012 & 2013 was a tenant there. One day the deponent came to his home to have lunch and he saw that a letter had been issued from the post office in the name of the deponent and they were searching for the deponent. However, the letter was received by the wife of the accused. Since the letter was in the name of deponent, the deponent snatched it from her. On its opening, it was found that the letter is actually a reply from ISM Department to an RTI application filed in the name of the deponent by someone. It was written on the letter that since the RTI is filed in the name of the deponent, the deponent would get Rs. 250/- for each day as fine if the reply is not provided within the stipulated period of time. Prior to the receipt of the letter, around 10 to 15 persons came to deponent's shop situated at Bemina and attacked him on the pretext that why was deponent filing RTI applications against them, who were working in ISM department. Then they told the deponent that if he wanted money, they could provide it. That is how the deponent got to know since the accused was also working in the ISM Department; as such he was filing RTI applications in the ISM Department in deponent's name. The deponent then asked the accused to vacate his premises. In reply the accused said "Don't mind, I'll pay for it". In this regard, the deponent informed the ISM Department through a letter and he himself delivered the same to the ISM Department located at Zam Zam Hotel. The letter was shown to the deponent, the deponent identifies his signature on it, same is marked as EXPW2/1. The

deponent also informed the same to Information Commissioner. After some time, the accused was arrested. Then the accused was granted bail and the deponent evicted the accused from his premises. The deponent gave his statement in the Police Station Saddar.

4.6 During cross-examination by defence counsel, the deponent stated that he had not executed any rent deed with the accused. The accused was residing as tenant in deponent's house in the year 2012 but the deponent does not remember the date. The accused was tenant there for more than a year. The deponent never filed any RTI in any department or in ISM. The deponent did not initiate any legal proceedings against the 10-20 persons who came to his shop. The deponent has annexed the reply from ISM with the complaint that he filed later before the ISM, however the deponent has not seen the same today in the Court. Since the accused was tenant in the deponent's house, as such the deponent was convinced that the RTI applications were being filed by the accused. When the deponent filed a complaint before ISM, he got a receipt for it. The RTI application filed by the accused in the name of the deponent before the ISM department was also shown to the deponent in the Office. Apart from it, a number of other RTI applications were also shown to the deponent which were issued in his name, one of the RTI applications was with regard to BMO Budgam, same was also shown to deponent. The application shown to the deponent was seeking information of some doctor. The deponent does not remember the doctor's name. The deponent did not ask the ISM whether the letter contained the threats and harassments. Since the deponent had read all the applications that were issued in his name but he does not remember their contents. Because of filing of RTI applications by the accused in the name of the deponent, some people became deponent's enemy, thereafter they came to the shop of the deponent however the deponent does not remember their names. When the deponent went to ISM Office he was not informed regarding the fact that an inquiry is going-on against the accused and in order to harass those officers, the accused was filing those RTI applications. The deponent does not know when the case was lodged against the accused after the filing of the complaint and what enquiry was conducted against the accused by the department. The deponent was asked to depose his testimony before the police on the same day when the accused was arrested. The deponent does not remember whether any document was shown to him in the Police Station. The RTI applications had warnings/threats too but the deponent does not know against whom the warnings/threats were addressed. The FSL Department also took some signatures of the deponent. The deponent provided some documents to the FSL and received a receipt for it but the receipts were lost by the deponent. The deponent had not verified about the accused because he was Doctor by profession. The deponent was duly taking rent from the accused. No further questions.

C. PW No. 5, Dr. Rakesh Kumar S/o Shri Badrinath R/o Vishal Nagar Talab Taloo Jammu (Assistant Director ISM)

4.7 The witness during his examination-in-chief deposed that he knows the accused present in the courtroom. The occurrence is of the

year 2013. The deponent was posted as Public Information Officer at that time. A number of RTI applications were filed in the year 2013 and the deponent and his officers replied the RTI applications. The deponent's office got suspicious of one person filing repeated RTI applications; however the deponent and his officers could not find it who was the said person. Thereafter in the year 2016, one order was passed by the Department to report in Police Station Saddar. The deponent gave his statement before the Police, admits the statement recorded under Section 161 Cr.PC to be true and correct and identifies his signature on it. The deponent had told the police that he only has suspicion that the RTI applications are being filed by Dr. Zahoor Ahmad Tantray but could not verify it that he had actually filed the applications. The deponent does not remember today that whether anyone went to FSL Police Station Saddar.

4.8 During cross-examination by defence counsel, the deponent deposed that he was posted as Public Information Officer and he was assigned the job of scrutinizing the RTI applications and then accordingly reply them. The deponent does not remember whether in the year 2012-14 any enquiry application was filed against any officer. The deponent has no knowledge whether any Departmental Inquiry was being conducted during the year 2010-13 against Dr. Zahoor Ahmad Tantray. The deponent does not remember whether any correspondence was issued in the year 2013 to Police Station Saddar or to any other Police Station or not. The deponent does not know whether any letter was received from the concerned Police Station seeking RTI application for FSL or whether any directions from Director concerned was received. The deponent cannot say whether the RTI application provided to FSL was of deponent's office. The deponent provided all the documents, then stated necessary documents or available documents to the RTI application filed by Shahnawaz Ahmad Raina in the deponent's office and the same was issued under the orders of the Information Commission. It is true that one letter was issued in the year 2014 i.e., after floods, to the Police Station Parimpora to the extent that the records in the deponent's office have been damaged and destroyed. It is true that accused was accorded promotion i.e., time bound promotion in the year 2015 by the complainant. No further questions.

D. PW No. 6, Mr. Bashir Ahmad Shah (Section Officer Directorate ISM)

4.9 The witness during his examination-in-chief deposed that he knows the accused present in the courtroom. The occurrence is of the year 2013. The deponent was posted at Directorate of ISM as Head Assistant in the year 2013. The deponent's office was regularly in receipt of RTI applications and office was accordingly replying/answering them. In the year 2013, huge numbers of RTI applications were received and the deponent's office got into suspicion that a single person is filing these RTIs before deponent's office. However, neither the deponent nor his office got to know who was filing it. Thereafter in the year 2016, one order was received from the Office

that the deponent had to come to Police Station Saddar. At Police Station, one official asked the deponent whether he could confirm that the RTI applications belonged to Dr. Zahoor Ahmad Tantray. The deponent replied that he could not confirm that the applications were issued by Dr. Zahoor Ahmad Tantray i.e., accused herein. The deponent did not record any statement before the Police. The deponent's examination recorded under Section 161 Cr.PC was shown to the deponent in the Court, to which he replied that the same does not have deponent's signatures.

4.10 During cross-examination by defence counsel, the deponent stated that he was working in RTI section as Head Assistant in the year 2013. From the year 2010 to 2013, no inquiry was pending against the accused. In the year 2013, no inquiry was pending in deponent's office. The deponent has no knowledge whether the accused was filing RTI application before deponent's office in view of the enquiry proceedings against him. The deponent has no knowledge with regard to FSL, however on the Appeal of Adv. Shahnawaz, the deponent provided the record to him from his office. It is true that the promotion granted to accused in the year 2015, was accorded by Dr. Kabir Ahmad Dar (complainant). It is true that if any Departmental Inquiry is pending against any person (employee), no promotion is accorded to him. No further questions.

E. P.W No. 7, Mr. Mohammad Yasin Rather (retired I.O)

4.11 The witness during his examination-in-chief, the deponent stated that he knows the accused present in the courtroom. The occurrence is of the year 2013 and the date of occurrence i.e., lodging of FIR is 30.10.2013. The gist of the complaint that was received by the deponent in English language is that "Dr. Ahmed Tantray, son of Ghulam Ahmed, resident of Kupwara at present, tenant at Sir Syed Abad Bemina Srinagar, House No. 97-A in the house of Muzaffar Ahmad Ganai, who has been transferred from Gulab Bagh Dispensary to Udampur Dispensary by the Department for his misconduct. The accused in order to harass the employees and pressurize the officials of the said department is falsely signing fake RTI applications. Among those was an RTI application of Muzaffar Ahmed Ganai and on his presence, he submitted that he had not filed any RTI application etc". The deponent was posted as Sub Inspector 2nd Officer at Police Station Saddar at that time. During the course of investigation, the deponent first prepared the site plan. The site plan was shown to the deponent, same is admitted to be true and correct and same has deponent's signatures affixed on it, which is today marked as EXPW7. Thereafter the deponent recorded the statement of the complainant under rules. During that period, the accused was informed through phone and he came to the police station, the deponent arrested him. The deponent in this regard prepared an arrest memo. The arrest memo was shown to the deponent, same is admitted to be true and correct which is marked as EXP7/1. The complainant at that time assured that since the Office had been moved in view of Darbar Move as such he went to Jammu. The complainant assured the deponent that he along with witnesses and evidence against the accused will be

provided to the deponent. In the meantime, the statement of Muzaffar Ahmad was recorded. Both the witnesses during deposition of their testimony suspected Dr. Zahoor Ahmad of filing RTI applications. Thereafter, remand was obtained for the accused. The accused was then released on bail. The deponent himself number of times requested the complainant via phone to immediately provide all the evidence in the matter and produce the witnesses but the complainant neither provided any evidence nor brought any witnesses before the deponent. The deponent then forwarded a letter through Speedy Post to the complainant, the receipt of which is available in the CD. The deponent on 12 January, 2014 forwarded the case to SDPO concerned for his approval to conclude the case in view of non-availability of evidence. The Court was also reported in the letter regarding the same. Only the LO of the time can say what investigation/ inquiry was conducted in the matter thereafter.

4.12 During cross-examination by defence counsel, the deponent deposed that after lodgement of FIR, the deponent conducted the inquiry in the matter till 12.01.2014. The RTI applications were not forwarded to deponent by ISM Department. Any document which is alleged to have forged/fake signatures is treated as "Questionnaire" and the person against whom the complaint is; his specimen signatures are taken on five papers and the same are produced before a judge (Magistrate). Thereafter, the Magistrate puts his signature and seal on those five papers and is sealed in a separate bag, whereas the "Questionnaire" is separately sealed. In this regard, a letter is issued for Director FSL. Then the whole process is taken before the SDPO concerned who issues a final "Questionnaire" letter to FSL. The receipts are received there which are annexed then with the case. The report is then received through SSP. However, this whole process was not conducted in the instant matter as the deponent had not received any document(s). No further questions.

F. P.W No. 8. SHO Police Station Kothibaqh Mr. Mohammad Manzoor (7848/NGO)

4.13 The witness during his examination-in-chief deposed that during the year 2014-15 he was posted at Police Station Saddar as SHO and during this period, the instant case was already declared as "Not Admitted". During deponent's posting, the instant matter was reassigned to him for investigation. The deponent conducted and completed the investigation of the matter in approximately four months. During the course of investigation, the deponent had correspondence with the complainant. The deponent asked original copies of the RTI application to the complainant, however they were not provided during deponent's posting. Apart from that, it had come to the notice that an enquiry is pending against the accused before the SP Hazratbal. In this regard, the deponent delivered a letter to SP concerned, who was requested to provide the details of the enquiry, however he did not reply to it during deponent's posting. This is how the deponent conducted inquiry in the matter, thereafter the deponent was transferred.

4.14 During cross-examination by defence counsel, the deponent

stated that FIR in the matter was lodged in the year 2013 and deponent came to Police Station Saddar in the year 2014. As mentioned in the complainant that a Departmental Enquiry is pending against the accused and he is harassing the Enquiry Officers, the deponent did not obtain any information regarding the said allegations from the concerned department. The deponent twice asked the complainant for documents however he did not provide it to deponent. The deponent did not provide any further information in the matter to his higher officials, whereas the complainant also did not provide the documents relating to the matter. The deponent did not contact any other department with respect to the instant matter. The deponent was transferred from Police Station Saddar in the year 2015. No further questions.

G. PW. No. 9, Mr. Farhan Aman Kar (retired scientific officer)

4.15 The witness during his examination in chief stated that the opinion dated 1st June 2015 bearing report No. FSL/43-DOC-SGR. The documents of the case was submitted by Dr. Sujhad Hussain, Assistant Director Indian Systems of Medicine J&K Srinagar (ISM) (HQ) Shalteng Srinagar Kashmir in case examination of documents which was referred by his letter No. DGISM/704 dated 11.05.2015 to Director FSL Srinagar and the same case was received at FSL Srinagar on 20.05.2015 vide FSL receipt No. FSL/Legal/Srinagar-463-DOC on examining these documents by me it was observed that the results of the examination revealed that the person who wrote admitted English writing/figures marked as A-1 to A-3, A-5 to A-7 also wrote question English writing/figures similarly marked as Q-2 to Q-9. The reasons given in my opinion bearing report No. FSL/43-DOC/SGR dated 01.06.2015. These writings/figures have been written by one and the same person. These similarities observed between the question and the admitted English writings/figures are significant and sufficient which lead me to the opinion of common authorship. The opinion has been signed by me bearing rubber stamp. The opinion has been shown by Ld. APP to the witness in open court from the court file on which the witness has identified his signature and has also admitted the contents of the opinion rendered by him; as such the document is marked as PW-9/1 today. The documents annexed on file with the opinion marks the rubber stamp as "examined" by the witness, were shown to the witness in the open court today which he has identified, total in no. as thirteen and are today marked as Mark A-1 to A-13. The opinion after examining was sent to legal section of FSL Sgr for onward transmission to the concern agency.

4.16 During cross examination by defence counsel the deponent had deposed that he has rendered 38 yrs in the dept. As per my knowledge and my service rendered in the department, except this case, I have not received any doc, any information, any letter from any department for examination. The documents are usually sent by investigating agency but the case at present has mention of no file in the doc or letter sent by Assistant Director ISM. The name of the accused regarding the question are admitted doc were not sent by ISM for examination, however admitted doc were not certified by the concern

authority if they belong to accused or not, although it is legally mandatory that there should be a certificate from the concerned dept. The handwritings and figures were only examined and no sign was with the concerned department. There was no mention of FSL in the communication received by the FSL. We have not received any communication from PS Sadder regarding the case; as such we have not rendered any opinion to the said police station. I have no knowledge with respect to the person who has sent the doc to FSL for examination. I have not received any document from any private person regarding the instant case. No further question.

5. EXAMINATION OF THE ACCUSED:

5.1 During examination in terms of 342 of the CrPC, the accused had stated that there is no incriminating evidence against him. He added that he wants to produce defence evidence in support of his contentions.

6. THE TRIAL: EVIDENCE OF THE DEFENCE

A. Defence Witness, Dr. Sheeraz Ahmad S/o Mohammad Subhan Lone R/o Rainawari Srinagar

6.1 The witness during his examination in chief deposed that he knows Dr. Zahoor i.e, accused as he was deponent's associate. The accused is deponent's Senior Doctor. The deponent and accused were working on migrant substitute and were working on regularization of migrant substitutes. Thereafter the deponent and accused along with other doctors were presenting them before government for regularization. In the year 2013 the accused told the deponent that some agency has taken drug samples from his dispensary, and whether something likewise had occurred to deponent or not? In reply to it, the deponent told the accused that no sort of such thing had happened to the deponent. The deponent then heard that the accused had been arrested in some case due to which the deponent got into trauma. After some days the accused was admitted on bail and deponent met the accused and got the knowledge of the matter. In reply, the accused told the deponent that an FIR has been lodged against him and it is alleged therein that he was harassing some members of an enquiry committee till that time, in deponent's knowledge no enquiry was initiated against the accused. And till date the instant case is pending against him. Actually, the complainant was posted as higher official and he took illegal advantage of it while lodging the instant matter against the accused. It is important to note that after 2013, the accused was accorded time-bond promotion by the complainant in the year 2015.

6.2 During cross examination by Ld. APP the deponent deposed that he knows the complainant personally. The deponent cannot say what kind of harassment it was, which the accused told him that the instant case has been lodged against him for harassing his higher officials. The deponent has no personal knowledge whether the accused was filing fake RTIs application before the department or not, same is the

matter of record. In the year 2013 the deponent got to know that FIR was lodged against the accused. The deponent did not go to police to depose his statement. The deponent was not posted in the dispensary of the accused in the year 2013 because only one doctor was posted in the dispensary. The accused was posted in Srinagar in the year 2013. The accused was residing at Bemina in the year 2013 but the deponent cannot say whether he was residing in rented premises or at any relative's house. No further questions.

B. Defence witness, Dr. Mushtaq Ahmad Parray S/o Ali Mohammad Parray R/o Kupwara

6.3 The witness during his examination in chief deposed that he knows accused present in the court. In the year 2013 the deponent and accused were working together in district Srinagar prior to the lodgement of FIR, the accused told the deponent via phone that Crime Branch has taken samples from his dispensary in view of suspicious drugs but no suspicious drug was taken from deponent's institute. Thereafter the deponent got to know that accused had been arrested. The deponent went to police station to meet accused, where he got to know that the FIR was not lodged regarding the drugs but he had been arrested on the allegation of harassment to his enquiry officers. Since the accused and deponent were working in the same district as such in the knowledge of deponent no enquiry was pending against the accused. The APRs issued with respect to the promotion of accused in the year 2015 were also issued by the complainant. The instant case was lodged against the accused because of the complainant as the accused had raised his voice against the official "terrorism" in the department and in order to suppress his voice the instant case was lodged against the accused.

6.4 During cross examination by Ld. APP the deponent deposed that the accused and deponent were working together in district Srinagar in the year 2013 but deponent does not remember how long they were posted together. The deponent was residing in Estate quarters at Bemina in the year 2013 and accused was perhaps residing at his relatives in Bemina Srinagar. The deponent has no personal knowledge that the accused had filed RTI applications in his own department. The deponent cannot say for what purpose those RTIs were filed by the accused. The deponent does not know that the accused had filed RTI applications in someone else's names. When the deponent went to police station with the accused, he didn't record any statement there neither the deponent told the SHO to record his statement regarding the instant case. Thereafter the deponent did not find it necessary to depose his statement in the Police Station. The deponent does not know when the accused got bail. No further question despite opportunity.

7. BRIEF ANALYSIS OF PROSECUTION WITNESSES:

7.1 PW no. 1 has clearly corroborated the narrative of the prosecution by stating that when he was posted as Director ISM J&K in 2013 when his office a number of RTI applications were being filed

and one Muzaffar Ahmad Ganai had come to the Office and told that he had not filed any RTI application nor has he signed one. He also stated that he has a tenant in his house namely Dr. Zahoor Ahmad Tantray who receives the replies/answers of RTI applications and thereafter, it had emerged that the accused herein was doing so under his name. The witness has also added that when Muzaffar Ahmad Ganie had confronted the accused, the accused had responded by saying that he will pay for it to Mr. Muzafar. The witness has also admitted the contents and execution of the complaint EXPW1/1.

7.2 During cross-examination, Ld. counsel for defence has not been able to contradict the witness or the narrative of the prosecution anywhere. However, the Ld. counsel has only been able to show that the witness doesn't remember who was conducting the inquiry initiated against the accused in the department and that whether he has forwarded any copy of RTI along with the complainant to the police or not which neither contradicts the narrative of the prosecution nor does it make the testimony of the witness against the accused non-admissible. It is also shown that the FSL was forwarded few documents of the accused from the office itself, as the witness states that the Police was not investigating anything the matter and a warning was also issued against I.O from the office.

7.3 PW no. 2 has affirmed that in 2012 and 2013, the accused was his tenant and one day when he had come to his home for the lunch, he had seen that a letter had been issued from the post office in his name and they had been searching for him. He has stated that the letter was received by the wife of the accused and he had snatched it from her as it was in his name and after opening the same, he had found that the letter was a response from ISM Department to an RTI application filed in his name. He also stated that prior to the receipt of the letter, around 10 to 15 persons came to his shop situated at Bemina and attacked him on the pretext that why was deponent filing RTI applications against them, who were working in ISM department. It is stated by the witness that he had asked the accused to vacate the premises to which the accused responded by saying that he'll pay for it. The witness had affirmed that he had informed the ISM Department through a letter and when he had himself delivered to the ISM Department located at Zam Zam Hotel. The contents of the letter and its execution has been admitted by the witness exhibited as EXPW2/1.

7.4 During the Cross-examination, the witness categorically affirms that he has not filed any RTI application in any department or in ISM. It is stated that since the accused was his tenant, he was convinced that the accused had filed such applications. Neither the witness has been contradicted nor he is shown to be unworthy of credit.

7.5 PW no. 5 has affirmed that he was the Public Information Officer in 2013 at ISM. He has affirmed that in 2013, a number of RTI applications were filed in 2013 and the witness and officers had replied to the RTI applications and he had got suspicious of one the accused filing these applications. During cross-examination, the witness had not been contradicted nor has been shown to be unworthy of credit. Ld.

counsel for the accused is only able to show that the witness does not know whether any letter was received from the concerned Police Station seeking RTI application for FSL or whether any directions from Director concerned was received and that the witness cannot say whether the RTI application provided to FSL was of deponent's office which doesn't contradict the narrative of the prosecution.

7.6 PW no. 6 has stated that in 2013, he was posted as Head Assistant in the office of the Directorate of ISM and the office was regularly receiving RTI applications and the office was replying them. It is also stated that the office had a suspicion that a single person is filing these applications but the office did not get to know that who this person was. During the cross-examination, it has been shown that no inquiry was pending against the accused and the witness does not know that accused was filing such applications. The witness has not categorically alleged that accused had been filing such application.

7.7 PW no. 7 who is the IO has stated that he was the IO and had conducted inquiry till 12.01.2014 and the RTI applications were not forwarded to him by the department. It is also stated that the process of sending FSL has not been conducted as the witness had not received any document.

7.8 PW no. 8 has stated that he was posted at Police Station Sadder where the case was already not admitted and the case was assigned to him for investigation. It is stated that he had asked for the original copies of the RTI application to the complainant, however they were not provided during his posting. It is stated that later on, he was transferred. During the cross-examination, it is stated that as mentioned in the complaint that a Departmental Enquiry is pending against the accused and he is harassing the Enquiry Officers, the deponent did not obtain any information regarding the said allegations from the concerned department. It is also stated that the witness was transferred from the department in 2015.

7.9 PW no. 9 who is the FSL expert has stated that the examination of documents had revealed that the person who wrote admitted English writing/figures marked as A-1 to A-3, A-5 to A-7 also wrote question English writing/figures similarly marked as Q-2 to Q-9. The contents of the opinion in report bearing No. FSL/43-DOC/SGR dated 01.06.2015 have been admitted and execution has been admitted and as such is exhibited as PW-9/1 and the annexed documents which were identified were marked as Mark A-1 to A-13.

7.10 During the cross-examination, it is deposed that the name of the accused regarding the question are admitted doc were not sent by ISM for examination, however admitted doc were not certified by the concern authority if they belong to accused or not, although it is legally mandatory that there should be a certificate from the concerned dept. It is also stated that the witness has no knowledge with respect to the person who has sent the doc to FSL for examination

8. BREIF ANALYSIS OF DEFENCE WITNESSES:

8.1 DW Dr. Sheeraz Ahmad S/o Mohammad Subhan Lone R/o Rainawari Srinagar that the accused is his associate and his senior doctor. In the year 2013 the accused told the deponent that some agency has taken drug samples from his dispensary, and whether something likewise had occurred to deponent or not? In reply to it, the witness told the accused that no sort of such thing had happened to the witness. The deponent then heard that the accused had been arrested in some case due to which the deponent got into trauma. The witness has stated that no inquiry was initiated against the accused and the complainant was a higher official taking advantage of it.

8.2 During the cross-examination, the witness failed to explain what kind of harassment was it. The witness has no knowledge whether the accused was filing fake RTI applications or not. The witness has stated that the accused was residing at Bemina but he does not show that he was residing at rented premises or at any relative's house. The witness has not contradicted any contention of the prosecution.

8.3 DW, Dr. Mushtaq Ahmad Parray S/o Ali Mohammad Parray R/o Kupwara has deposed that in the year 2013 him and accused were working together in district Srinagar. It is stated that the accused told the deponent via phone that Crime Branch has taken samples from his dispensary in view of suspicious drugs but no suspicious drug was taken from deponent's institute. It is stated that he had gone to police station to meet accused, where he got to know that the FIR was not lodged regarding the drugs but he had been arrested on the allegation of harassment to his enquiry officers. It is stated that in the knowledge of the witness no enquiry was pending against the accused.

8.4 During the cross-examination, it is stated that the accused was perhaps residing at Bemina, Srinagar at his relatives. The witness does not know that the accused had filed RTI applications in someone else's names. The witness has not contradicted any contention of the prosecution.

9. POINTS OF DETERMINATION:

9.1 The arguments of both the sides were heard and considered. The following points arise in the instant case which require determination:

- a) Whether the accused has cheated the ISM Department by filing RTI applications in the name of Sh. Muzaffar Anwar Ganie?
- b) Whether the accused has used the forged RTI applications in question as genuine or not?

10. ANALYSIS:

10.1 Since, these are common questions of facts, these points are addressed by virtue of this common analysis. The burden of proving these points is on the prosecution. The following averments need to be proved to shift the onus of proof on the defence:

- a) That the application was filed in the name of Mr. Muzaffar Anwar Ganie before the officials of ISM department.
- b) That the application was filed by the accused.

10.2 To prove that the document was filed by the accused, the prosecution has primarily relied upon the application in question which is marked as MARK A2 with the chargesheet along with other applications. MARK A2 is the application addressed to Chief Medical Officer, District Health Society (NRHM) Budgam (Public information Officer) by Mr. Muzafar Ahmad Ganale S/o M Anwar Ganie seeking information about, the following:

- a) List of Pharmacists (ISM) appointed under NRHM in District Budgam since January 2007.
- b) Photostat copy of diploma certificates of above candidates duly attested by the P.I.O.

10.3 Mr. Muzafar Ahmad Ganle who is also PW no. 2 in the case has deposed before this Court that he has never filed any RTI application before any department. It is also deposed by the said witness that the response letter addressed to him was received by the wife of the accused who was a tenant and he had snatched it from her. He has also stated that prior to the receipt of the letter, around 10 to 15 persons came to his shop situated at Bemina and attacked him on the pretext that why was deponent filing RTI applications against them, who were working in ISM department. As such, the said witness had framed an opinion that the accused had filed the fake RTI application in his name. Furthermore, it is stated that when he had asked the accused to vacate his premises on this pretext, the accused had replied that he would pay him for it. It is stated by the witness that the said issue was informed by him to the ISM department by way of EXPW2/1. It is also noted by this Court that the nature of information sought pertains to a person belonging to the stream Medical Department and it has not been that such person had any concern with medical department.

10.4 It is observed that the complainant (PW no. 1) has clearly corroborated the narrative of the prosecution by stating that when he was posted as Director ISM J&K in 2013 when his office a number of RTI applications were being filed and one Muzaffar Ahmad Ganai had come to the Office and told that he had not filed any RTI application nor has he signed one. He also stated that he has a tenant in his house namely Dr. Zahoor Ahmad Tantray who receives the replies/answers of RTI applications and thereafter, it had emerged that the accused herein was doing so under his name. The witness has also admitted the contents and execution of the complaint EXPW1/1.

10.5 During cross-examination, Ld. counsel for defence has not been able to contradict the witness or the narrative of the prosecution anywhere. However, the Ld. counsel has only been able to show that the witness doesn't remember who was conducting the inquiry initiated against the accused in the department and that whether he has forwarded any copy of RTI along with the complainant to the police or

not which neither contradicts the narrative of the prosecution nor does it make the testimony of the witness against the accused non-admissible. However, since the complainant is an interested witness, further corroboration should be required from other witnesses.

10.6 Thirdly, the Public Information Officer concerned PW no. 5 has also affirmed in his examination that in 2013, a number of RTI applications were filed in 2013 and him and his officers had replied the RTI applications and the department had suspicion that one person was filing these applications. Fourthly, the Head Assistant concerned at the time PW no. 6 has affirmed the same fact but has denied that the office knew that who has been filing these applications. The said witness has also stated that no inquiry was pending against the accused from 2010 to 2013 and that in 2015, promotion was accorded to the accused.

10.7 Lastly, the FSL's handwriting expert PW no. 9, has stated that the results of the examination revealed that the person who wrote admitted English writing/figures marked as A-1 to A-3, A-5 to A-7 also wrote question English writing/figures similarly marked as Q-2 to Q-9. It is stated that the similarities observed between the question and the admitted English writings/figures are significant and sufficient which lead me to the opinion of common authorship. The documents annexed on file with the opinion marks the rubber stamp as "examined" by the witness, were shown to the witness which he had identified, total in 13 in number and were marked as Mark A-1 to A-13 in the Court.

10.8 The memo of the opinion so submitted by PW no. 9 exhibited as EXPW 9/1 dated 25.05.2024 would suggest that upon cumulative consideration, it has been opined that general writing characteristics of movement, speed, slant, skill, alignment, relative size and proportion of various characters and parts of characters are observed to be similar between the Questioned and the Admitted English writings/figures. It is also stated that the skill and line quality of the Questioned English writings/figures marked as Q-2 to Q-9 is also observed to be similar to those of the Admitted English writings/figures marked A-1 to A-3; A-5 to A-7.

10.9 It shall be pertinent to mention here that writings figures marked as Q-2, and Q-3 pertain to the document in question viz. application of in the name of Muzaffar Ahmad Ganie addressed to Chief Medical Officer. Q-2 includes the dated and number whereas Q-3 refers to his signatures. Q-4 refers to the receiving acknowledgement of Muzaffar on the response filed by Chief Medical officer Budgam, addressed to Mr. Muzafar Ahmad Ganaie. Q-5 refers to the contents of fee form allegedly filled in the name of Muzafar Ahmad Ganaie by the accused. Q-6 and Q-7 refer to the contents of fee form allegedly filled in the name of other persona by the accused. Q-8 pertains to contents of application filed in the name of M. Ashraf Ganie.

10.10 It is also stated by PW no. 9 that Similarities are also observed in the movement of execution of various characters and parts of characters with the various combination and termination of characters

and parts of characters between the Questioned and the Admitted English writings/figures. It is added that the interse comparison of the Admitted English writings/figures marked as A-1 to A-3; A-5 to A-7 reveals that these Admitted English writings/figures are free and smooth having natural variation among themselves written by one and the same person and when the comparison is made to those of the Questioned English writings/figures marked as Q-2 to Q-9, they show similarities with natural variation and natural variation is found to be within the range and extent as exhibited by Admitted English writings/figures marked as A-1 to A-3; A-5 to A-7. Similarities have also been observed in the minute and inconspicuous details of the formation various characters and parts of characters between the Questioned and the Admitted English writings and some of the significant features of similarities are observed in writing the words/letters like only; Indian; Systems ; of; Medicine; Received; Sgr etc. with the manner of combining he various characters and parts of characters and these similarities are also observed in writing the letters like M; d;R;n;e;g;r;i; etc. between the Questioned and the Admitted English writings. These similarities are also observed in writing the figures like 1;2;3;4;5;7;8 with the shape of its body parts and the slanted combination of figures like 20 between the Questioned and the Admitted figures.

10.11As such, the opinion framed by the PW no. 9 suggests that these similarities observed are significant and sufficient and will not accidentally coincide in the writing habits of two different persons and when considered collectively lead the expert to the opinion of common authorship between the Questioned and the Admitted English writings/figures. It is also stated that the name of the accused regarding the question are admitted doc were not sent by ISM for examination, however admitted doc were not certified by the concern authority if they belong to accused or not, although it is legally mandatory that there should be a certificate from the concerned dept. The handwritings and figures were only examined and no sign was with the concerned department.

10.12The Ld. counsel for the accused seems to have rebutted these contentions on the grounds that an illegal FSL report has been managed by Complainant after two years of FIR and the report has been denied on the grounds given below:

- a) That Scientific Officer (Witness no. 9) deposed before this Court that he has not examined the Signatures of questioned / admitted documents.
- b) That Complainant while forwarding documents has concealed the fact that Documents pertain to any FIRs and None of documents stood Attested by any competent authority.
- c) Witness admits that during his 38 years service, except this case documents used to be forwarded by Police Department through magistrate but in this case FSL, organization has been misled.
- d) None of Documents forwarded by complainant to FSL belong to Office records of complainant or pertain to FIR as such FSL on irrelevant records had been managed in Flimsy manner to

escape counteraction under section 182 as had already been recommended by Police station concerned.

10.13 It is argued that it is fairly well settled that before acting upon the opinion of the hand-writing expert, prudence requires that the court must see that such evidence is corroborated by other evidence either direct or circumstantial evidence. It is stated that in case reported as, "109 (2004) DLT 130", titled as, "Rakesh Kumar Vs. State", the Hon'ble High Court of Delhi has been pleased to hold that if the specimen signatures/handwriting/thumb impression/finger print impression of the accused are obtained during investigation by IO without the permission of the Court, then the same cannot be used against the accused and the report of handwriting expert thereupon would be of no consequences and the same cannot be used to connect the accused with the crime. In this regard, para 17 of the Judgment, containing the law on the aforesaid point is reproduced as under by Ld. counsel for accused:

"17. Moreover, the alleged specimen signatures / handwriting/thumb/ finger print impression of appellant Chandra Shekhar and Sri Chand were obtained during investigation by the IO without prior permission from the Court. Facts in the case of Sukhwinder Singh and Others Vs. State of Punjab, II (1994) CCR 531 (SC) (1994) 5SCC 152, were that specimen handwriting of the appellant were taken under the direction of the Executive Magistrate during the investigation when no inquiry or trial was pending in his Court. Accused person did not raise any objection thereto yet Hon'ble Supreme Court observed that such specimen writing of the accused persons could not be made use of during the trial and the report of the handwriting expert is thus rendered of no consequence at all and could not be used against the accused to connect him with crime. In the present case the specimen signatures / writing / thumb impressions were obtained during the investigation without any permission from the court. Therefore, the case in hand stands on a weaker footing than that of Sukhwinder Singh (supra). Therefore, in view of the law laid down by the Supreme Court in the case of Sukhwinder Singh (supra) it follows that the specimen writing/thumb impression/finger print impression FIR No. 319/03 PS Preet Vihar 18 of 20 State vs. Kashi Ram & Ors of the appellant Sri Chand, Chandra Shekhar could not be made use of during the trial. The report of the handwriting expert/Finger Print Bureau is thus rendered of no consequence at all and

cannot be used to connect the appellants with crime”.

10.1428. Further, it is stated by Ld. counsel for the accused that in case reported as, "2004 Cr.LJ 242", titled as, "M/s Durga Prasad Vs. State of Andhra Pradesh", the Hon'ble High Court of Gujarat has been Pleased to hold that if the specimen signatures of the accused were not obtained By the prosecution in presence of Presiding Officer and even if the signatures Obtained by the police tally with that of signatures on the said documents, the Same cannot be the basis of the conviction of the accused.

10.15It is observed that with regard to contentions a) and b) (supra), raised by the Ld. counsel for the accused, this court is of the view that there is other substantive evidence against the accused apart from the opinion of the FSL expert, as such merely the signatures of accused were not examined by the FSL expert would not turn down the other evidence produced against the accused. Even though the complainant while forwarding these documents to the FSL did not mention that the same pertain to any FIR, does not tender the opinion so given by the expert null and void.

10.16It is stated by Ld. counsel for the accused that prosecution witness no. 7 who is the IO in the instant case had not admitted the FIR as no record was provided to the concerned IO by the complainant and despite of the fact that the IO asked numerous times to the complainant to provide the relevant documents in this context and the instant FIR was not admitted two times. However, this court is of the view that even though that the case was not-admitted during the investigation earlier, the same cannot be a ground to rebut the evidence appearing against the accused in the case at this stage.

10.17In light of the above, the court is of the view that the witnesses of the prosecution have proved the following contentions:

- a) That the office of ISM was in receipt of numerous RTI applications in 2013.
- b) That the application in question has not been filed by Muzafar Ahmad Ganaie.
- c) That the application in question was received by the wife of the accused at the first instance.

10.18The only question of fact which remains to be addressed here is that whether the application was written by the accused or not. At first, it shall be pertinent to refer to section 47 of the Evidence Act, Svt. 1977 which has been reproduced below.

"47. Opinion as to handwriting, when relevant.— When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written

or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents, written by himself or under his authority and addressed to that person or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him."

10.19A bare perusal of the abovementioned provision would suggest that opinion any person who is acquainted with the handwriting of the person by whom the document is supposed to be written is a relevant fact. In the instant case, the FSL handwriting expert is not a person who is acquainted with the handwriting of the person. However, this court is of the view that section 47 of the Evidence Act, Svt. 1977 is not exhaustive to prove the handwriting on a document. Reliance can be placed on the evidence of the expert.

10.20The FSL handwriting expert has categorically stated that as marks A-1 to A-3; A-5 to A-7 reveals that these Admitted English writings/figures are free and smooth having natural variation among themselves written by one and the same person and when the comparison is made to those of the Questioned English writings/figures marked as Q-2 to Q-9 which are the contents of the RTI documents / proformas/ applications. The expert has stated that he has not examined the Signatures of questioned / admitted documents. However, this court is of the view even if the signatures are not examined, the same cannot be a sole ground for refusal of the opinion of the expert. The expert in express terms has stated that similarities have also been observed in the minute and inconspicuous details of the formation various characters and parts of characters between the Questioned and the Admitted English writings and some of the significant features of similarities are observed in writing the words/letters like only; Indian; Systems ; of; Medicine; Received; Sgr etc. with the manner of combining he various characters and parts of characters and these similarities are also observed in writing the letters like M; d;R;n;e;g;r;i; etc. between the Questioned and the Admitted English writings. These similarities are also observed in writing the figures like 1;2;3;4;5;7;8 with the shape of its body parts and the slanted combination of figures like 20 between the Questioned and the Admitted figures. It is stated in the opinion that these similarities observed are significant and sufficient and will not accidentally coincide in the writing habits of two different persons and when considered collectively lead me to the opinion of common authorship between the Questioned and the Admitted English writings/figures. Since all aspects of the handwriting are addressed by the expert, and it is not shown by way of cross-examination that any aspect has been left by the expert, it proves that the Questioned and the Admitted figures are

written by the same person. Further, it is also not shown by the Ld. counsel for the accused that the samples so submitted by the department official to the FSL expert were not his writings.

10.21 It is agitated by Ld. counsel for the accused that the Complainant while forwarding documents has concealed the fact that Documents pertain to any FIRs and None of documents stood Attested by any competent authority. It is also added by Ld. counsel for the accused that the witness admits that during his 38 years' service, except this case documents used to be forwarded by Police Department through magistrate but in this case FSL, organization has been misled. It is added that none of Documents forwarded by complainant to FSL belong to Office records of complainant or pertain to FIR as such FSL on irrelevant records had been managed in Flimsy manner to escape counteraction under section 182 as had already been recommended by Police station concerned. In light of such arguments, this Court is of the view that the expert opinion is only restricted to the extent that the Questioned and the Admitted figures are written by one person but it is not stated by the expert, Mr. Farhat Aman Kar, that the accused has written these documents. Even though the document has not been forwarded to the FSL through proper channel, the same cannot be a sole ground to acquit the accused. It is worthwhile to mention here that the Assistant Director ISM, J&K has referred the report to SHO Police Station sadder and the duty of the Incharge of Investigation is only to collect material during the investigation. It was the prerogative of the IO to either accept the material or reject it.

10.22 Furthermore, it is a settled position of law that substantive evidence shall be given preference over the expert evidence. In the instant case, the substantive oral evidence clearly suggests that the accused was residing at Bemina and the son of house owner, Mr. Muzafar Anwar Ganie, had taken the response of the department from the wife of the accused and as such he had intimated to the department that he had not filed the RTI. Based upon such information and suspicion, the concerned Department had sent the requisite documents to FSL and an FIR was lodged.

10.23 It is worthwhile to mention here that the witnesses produced in the defence have also affirmed that the accused was residing at Bemina at that time. Although they have not stated that he was not residing at rented premises or not. However, it is a material fact which corroborates the contention of the son of the house owner, Mr. Muzafar ganaie that the accused was residing at Bemina. Muzafar Ganaie is a material witness in the case who has made it crystal clear before this Court that he has not forwarded the RTI application to the ISM Department or any other department. The fact that Muzafar Ganaie has stated that he had to snatch the response in his name from the wife of the accused also remains unrebutted by the accused. As such, keeping in view the entirety of the evidence produced by the prosecution and the accused, this Court is of the view that the accused had forwarded the RTI application in the name of Muzafar Ahmad Ganaie to the officials of the ISM Department.

11. CONCLUSION:

11.1 The prosecution has proved its case beyond any reasonable doubt to the extent that the accused had cheated the officials of department of ISM by pretending to be Mr. Muzafar Ahmad Ganaie by filing an RTI application in his name and thereby using a forged document as genuine. As such, the accused is hereby convicted for offences punishable in terms of sections 419 and 471 of the RPC.

11.2 The matter shall be posted on 28.08.2024 for hearing the arguments on the quantum of sentence which is to be imposed upon the accused. In the meantime, and till next date of hearing, the accused shall be detained at Central Jail, Srinagar. A copy of this judgment shall be provided to the accused free of cost. Another copy shall be forwarded to Incharge, Central Jail for its compliance.

Announced.

(AHTZAZ AHMED)
2ND ADDITIONAL MUNSIFF (JMJC)
AT SRINAGAR

Date: 27.08.2024

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