

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, SRINAGAR

CNR No.:JKSG010022012022

Case No.:298/2022

Date of Institution:28.07.2022

Date of Order :14.11.2024

UT of J&K through P/s Kothibagh

Through: Meena Gowhar PP

Vs.

1. Nusrat Ahmed Beigh son of Abdul Rehman
Resident of 54-Suthrashahi, Srinagar
2. Shahnawaz Bahar son of Abdul Gaffar
Resident of Sector No. 01 Gousia Colony,
Baghati Kanipora, Srinagar.
(Accused)

Through : Advocate Arzan Ahmed

In the matter of : Case FIR No. 66/2014 under Sections
435,420,468,201 RPC of P/S Kothibagh,
Srinagar

Coram: Jaffer Hussain Beg JK code: 00040

ORDER

1. The case was fixed for arguments on charge/discharge of the accused persons.
2. The prosecution case in brief is that on 07.08.2014 police station Kothibagh received a complaint from Mushtaq Ahmed Simnani to the effect that specific areas of three rooms where specific valuable information of serious components of the

department was lying in the store of first floor of the building of Director School Education, Kashmir was ablaze which was handy work of some miscreants who wanted to foil the progress of the office. On receiving this complaint FIR No. 66 of 2014 for offence under Sections 435 RPC was registered in police station Kothibagh. During the course of investigation police went on spot, prepared the site plan and recorded the statements of the witnesses. Burnt material including some gutted private school files, gutted computer, printer, monitor with other accessories, wire, gutting papers with ash were recovered which were seized and sealed on spot. The sealed packets were sent to FSL, Srinagar and report was obtained. The opinion of FSL was that no inflammable substance was found from the burnt material and there was no sign of short circuit. It came to surface that motive behind the mischief of fire was to destroy the records related to fraud/forged extension in recognition orders issued in favour of some private schools and their managing bodies committed by the employees of Directorate of School Education, particularly dealing with private schools.

3. During the scrutinizing of the record relating to private schools seized from Directorate of School Education it has been established that the extension orders in recognition of private schools, namely, (1) Central Public memorial School, Budubagh, Khanyar, (2) Kamraz English Medium school Bategam, Kupwara (3) SMI English Medium School Arwani,

Ananthnag (4) Davood Memorail Institute Ganawpora, Shopian and (5) Hanfia English Medium School Mazhama, Budgam and order regarding approval of managing committee of private school Oxford School of Education, Budgam were not approved by the Director/Joint Director School Education, Kashmir, neither the order Nos; 1513 DSEK of 2013 dated 29.08.2013, 1568 DSEK of 2013 dated 04.07.2013, 2407 DSEK of 2013 dated 15.01.2013 and 683 DSEK of 2014 matched with the order book. As per the order book the order No. 1513 of 2013 dated 29.08.2013 was found given on fake order copy pertains to private school Oxford school of Education Budgam is actually issued for managing committee of Baba Reshi Memorail Islamia School Tangmarg, Baramulah, Order No. 1568 of 2013 dated 04.07.2013 given on fake order copy pertain to private School Davood memorial Institute Ganawpora Shopian is actually issued for transfer/adjustment of Pir Bashir Ahmed & Wali Mohammed I/C Head master of District Kupwara, Order No. 2407 of 2013 dated 15.01.2013 given on fake order copy pertain to private School Ammity International School Lawaypora, Srinagar is actually issued for regularization of one RT of District Srinagar Zone Idgah and Order No. 683 of 2014 dated 03.06.2014 given on fake order copy pertain to private school Sheiku-ul-Alam English Medium Public School, Kralpora, Kupwara is actually issued for approval of managing Committee in r/o Bright career Sec. School Vilgam, Kupara. Even if, the order No. 647 of 2014

dated 29.05.2014 pertains to Central Public Model School Badubagh, Khanyar, Order No. 2184 of 2013 dated 14.11.2013 pertain to Kamraz English Medium School, Bategam, Kupwara, Order No. 2166 of 2013 dated 19.11.2013 pertain to SMI Eng. Med. School Arwani Anantnag, Order No. 734 of 2014 dated 11.06.2014 pertain to Hanfia Eng. Medium School, Mazhama, Budgam are matched with the order book but as per the record seized from the Directorate of School Education, Kashmir and during securitizing the master files of above said private schools, no such order has been found approved by the Director School Education, who was the competent authority.

4. During the course of further investigation, it was established that other among 18 files, the orders of extension/approve of managing committee related to other private schools were fake /forged as those orders were prepared, signed/scanned by the accused persons namely Nusrat Ahmed Beigh, Head Assistant and Shahnawaz Bahar, Junior Assistant, the employees of the Directorate of School Education. It was also established that the fake/forged extension orders in recognition and orders regarding approval of managing committee of all private schools seized were fraudulently prepared and issued by the accused persons and to destroy the said fake record these accused persons committed mischief by setting the record on fire. After conclusion of the investigation offences under Sections

435,420,468 and 201 RPC have been established against both these accused persons.

5. Learned Public Prosecutor has argued that as the accused No.1 was the Head Assistant and the accused No.2 the Junior Assistant in the establishment for extension and approval of managing committee record regarding the private schools and those records have been found fake which have been forged by the accused persons being the Incharge of the section and they are the person who have set the record on fire, have cheated the department and the said schools and even had destroyed the record in order to conceal the commission of crime. This is sufficient evidence collected by the Investigating officer during the course of investigation to prima facie charge the accused persons.

6. Learned counsel for the accused has argued that there is not even an iota of evidence on record to connect the accused with the crime. As there is no evidence collected by the Investigating officer to connect the accused with the crime, so, it would be a futile exercise to charge the accused persons.

7. I have heard the argument advanced at the bar. I have perused the entire material on record.

8. I am aware that at this stage even strong suspicion of probability of existence of allegations prima facie justified by the material on record is sufficient to charge the accused. The standard of test which is to be applied to test the prosecution


case at the conclusion of the trial has not exactly to be applied at the stage of charge but at the same time the court has also a duty to prevent abuse of process of law and to safe guard the fairness of justice and pass appropriate orders when circumstances, facts and material on record demand.

9. From the perusal of the entire material on record it reveals that there is not even a single word in the statement of any witness recorded during the course of investigation by the investigating officer that any of the accused persons has set the record on fire. There is also not a single word in the statement of any witness that the accused persons have committed the forgery in their presence and have cheated the department. The investigating officer has not sent the signatures of the accused persons for FSL report. In this way there is no evidence on the record to say that the accused persons have committed forgery as a result of which it cannot be said that they have cheated the department or the private schools. Similarly when there is no evidence collected by the Investigating officer during the course of investigation that those were the accused persons who set the record on fire, so it cannot be said that the accused persons have caused disappearance of the record. In this way when there is not an iota of evidence on record collected by the Investigating Officer to connect the present accused persons for commission of any offence, it would be a futile exercise for this Court to charge the accused persons because if the

evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, cannot show that the accused committed any offence, then there will be no sufficient ground for proceeding with the trial as has been held by the Hon'ble Supreme Court in case **State of Bihar Vs. Ramesh Singh reported in AIR 1977 SC 2018.**

11. The learned PP for the UT could not satisfy the court that if the evidence adduced by the prosecution is fully accepted at this stage whether it amounts the commission of any offence against the present accused. When such is the situation it cannot be said that the prosecution is in a position to prove that a prima facie case of any offence is made out against the accused persons. There is rather no evidence against the accused persons on the basis of which they can be charged under any offence. No prima facie case is made out against the present accused and this being so they are discharged. They stand released from their bail bonds. File after due completion shall go to records.

Announced
14.11.2024.
"IAS"


(Jaffer Hussain Beg)
Principal Sessions Judge,
Srinagar