

IN THE COURT OF ADDITIONAL SESSIONS JUDGE JAMMU

CNR No. JKJMO10005532016

File No. 9005/2016

Date of Institution: 10.09.1996

Date of Order: 28.10.2020

State /U.T through Police Station, Crime Branch, Jammu.

Through: Ld. APP for the State

V/S

1. Hans Raj Mangotra S/O Dollay Ram Mangotra Retd. IAS Officer House No.8 Shastri Nagar, Jammu.
2. Manoj Mangotra S/O Hans Raj Mangotra R/O House No. 8 Shastri Nagar, Jammu.
3. Amardeep Sharma S/O Man Mohan Sharma R/O Talab Tillo, Jammu.
4. Kuldeep Singh S/O Sarak Dev Singh Jamwal R/O Gandhi Nagar, Jammu.
5. Rashpal Singh S/O Gian Singh R/O Sialsui, Rajouri. **(DEAD)**
6. Rameshwar Singh S/O Gian Singh R/O Sialsui Rajouri.
7. Ripu Daman Sharma S/O Manmohan Sharma R/O Talab Tillo, Jammu..
8. Ashok Agarwal S/O Shadi Lal R/O Shakti Nagar, Jammu. **(DEAD)**
9. Sudarshan Singh Jamwal S/O Narinder Singh R/O Rani Park Kachi Chawni, Jammu.
10. Thakur Shiv Ram S/O Rangu Ram R/O Gandhi Nagar, Jammu. **(DEAD)**
11. Mool Raj S/O Amar Nath R/O Pacci Dhakki, Jammu. **(DEAD)**
12. Sunil Matoo S/O Safiq Massih Matoo R/O Ustad Mohalla, Jammu.
13. Surinder Singh S/O Balwant Singh R/O Upper Bazar, Jammu. **(DEAD)**
14. Narinder Sharma S/O Isher Dass R/O Nagri Kathua.
15. Sardhari Lal S/O Isher Dass R/O Sunjwan Hiranagar. **(DEAD)**
16. Randhir Singh S/O Gian Singh R/O Sialsui, Rajouri.

Present : Mr. Ved Raj Wazir Sr. Advocate,
Mr. Madan Baru , Mr. Sahib Singh Khajuria,
Mr. Vikram Sharma , Advocates for the accused.

F. I. R. No.08/1996 of P/S Crime Branch, Jammu. Offences Under Sections 409, 420, 467, 468, 471-A, 201, 120-B RPC.

CORAM : Tahir Khurshid Raina
[UID NO : JK00055]

O R D E R (THROUGH VIRTUAL MODE)

PROLOGUE

1. **Excise Scam**, as then popularly called in the year 1995-96, became the subject matter of two F.I.Rs' lodged in the year 1996 and 1997. F.I.R. No.8/1996 (For

short the first F.I.R) got registered by Crime Branch, Jammu whereas F.I.R No.34/1997 (For short second F.I.R) got registered by Vigilance Organization, Jammu. Both culminated into charge sheets. While the charge sheet based on first F. I. R. was still in existence, the second charge sheet, based on second F. I. R, got filed in the Ld.Anti-corruption Court , Jammu.

2. After filing of the second charge sheet in the Ld. Anti-corruption Court, the Ld. Sessions Judge, Jammu sent the first charge sheet to the said Court in the year 2000 on the premise that on filing of second charge sheet on the same subject matter, the earlier one stood superseded and non-est , accordingly sent it to Ld. Special Judge Anti-corruption for reference purpose. There it got clubbed with the second charge sheet.

3. However, the second charge sheet was truncated by the said Court, on this analogy that in presence of first FIR, second FIR cannot survive. However, by virtue of same order , revived the first charge sheet , returned it back to the Ld.Sessions Court , Jammu for further proceedings . Thereafter the Ld. Sessions Judge Jammu transferred the first charge sheet to this Court on 28.11.2016 for disposal under law . Since then it was pending disposal in this Court.

4. It is in this context this Court has now to address the first charge sheet. So the total span this issue has traveled so far is 24 years but has not yet crossed the stage of charge. In this context, the case has got an importance to reveal its long journey, traveled in various Courts and why, for proper understanding of the issue in debate. It is also apt to put on record that there were 16 accused in this charge sheet. Out of which six have expired so far. Accordingly the proceedings against all the six stand abated.

(CONSPECTUS OF THE CASE)

5. J. S. Modi, the then Deputy Commissioner Excise, Jammu, is a blend of

twin status in the two charge sheets based on two F.I.Rs'. While he was cited as complainant witness in the first charge sheet , where as arrayed as accused No.1 in the second charge sheet. He first exposed the crime, put it in public domain, exposed many high profile faces of the times. However, when the canvass of the investigation expanded and rays of light started exposing many more faces, the complainant also got exposed as the accomplice of the crime . Hence second F. I. R. got lodged against J. S. Modi, and his ilk in the Excise Department.

6. Briefly put, a complaint was lodged by J. S. Modi, in the capacity of D. C. Excise Jammu before the SSP Crime Branch, Jammu, alleging therein that the country liquor vends of Jammu Province were put to auction for the year 1995-96 on 23.03..1995 by the Excise department . M/S Kuldeep Singh and Co (Accused herein) was allotted contract for an amount of Rs.13,23,00,000/- for supply of country liquor to six different groups in Jammu Province. The allegations made in the complaint that partners of the firm M/S Kuldeep Singh & Co., in-conivance with some officials of Excise Department and Government Treasuries, had cheated the government for an amount of Rs. 97,50,000/- by tampering the treasury and bank receipts, causing huge loss to the State exchequer at the expense of their personal gain.

7. Pursuant to this complaint, first F.I.R. got registered at Police Station Crime Branch, Jammu for commission of offences U/Sec. 409,468,420,471-A and 467 RPC. The F.I.R was investigated by the Crime Branch and final report U/Sec. 173 Cr. PC (for short the code) was filed against sixteen accused persons in the court of Ld. Chief Judicial Magistrate, Jammu for commission of offences U/S 409, 420, 467, 468, 471-A, 201, 120-B RPC. As the offence U/S 467 RPC was exclusively triable by Court of Sessions , accordingly the charge sheet was committed by Ld. Chief Judicial Magistrate to the Court of Ld. Sessions Judge, Jammu on 10.09.1996.

8. In the meanwhile an application for bail came to be filed by the accused

Kuldeep Singh Jamwal before the Hon'ble High Court, Jammu . Same was dismissed by the Order dated 13.12.1996. However, in the said order it was observed that the conduct of excise officials particularly of Deputy Commissioner (J. S. Modi), has at all not been investigated by the police to ascertain as to whether it was a sheer negligence on their part or they were party to the scam as for one year they were not in a position to discover, that a fraud was being played with them.

9. A year later, in 1997, accused Kuldeep Singh again filed a bail application in the Hon'ble High Court, Jammu . Report was sought from Vigilance Organization which filed its preliminary enquiry report (PER) before the said Court. Hon'ble High Court though bailed out Kuldeep Singh vide its order dated 24.07.1997, but on the basis of PER of Vigilance Organization Jammu , directed Vigilance Organisation to register a case and start investigation in the right earnest. It was further observed in the said order that during the investigation to be conducted by Vigilance Organization, may be certain persons other than the accused in the first F. I. R. are found involved in the conspiracy, in that eventuality the trial, which the Ld. Sessions Judge , Jammu may start in the first charge sheet will be of no use and consequence and accordingly trial based on this chargesheet pending in the Sessions Court, Jammu, was **stayed** by the Hon'ble High Court.

10. The order was passed in this context also that the chargesheet, to be filed by Vigilance Organization, may bring in its fold certain government officials , in that eventuality the case has to be tried under Prevention of Corruption Act by the Anti-corruption Court . Accordingly Vigilance Organization registered the case bearing F. I. R. No.34 of 1997 (as called the second F.I.R), for commission of offences U/Sec. 5 (2) PC Act of 2006, 409,420,467,472,419,468, 471, 120-B RPC.

11. Finally Vigilance Organization filed charge sheet in the Court of Special Judge Anti Corruption, Jammu on 30.05.1998 against 24 accused persons, including

excise officials with J. S. Modi at the top, for the commission of offences U/Sec. 5 (2) PC Act and 406,, 419,420,467,468, 471, 471-A, 201, 120-B RPC.

12. Now during the pendency of second chargesheet in the Anti Corruption Court, Jammu , J.S Modi , Accused No.1 in this chargesheet, moved a petition in the Hon'ble High Court, Jammu, through the medium of O.W.P. No.1055/1998, challenging the legality of second FIR and the sanction accorded by the government for his prosecution by the Vigilance Organization in the said FIR. Hon'ble High Court stayed the trial in the second charge sheet. However, on 18.11.2002 modified the order of stay with a direction to the Vigilance Court to proceed with the trial but final decision will not be accorded till further orders . However, no trial proceeded ahead in view of the challenge thrown on the second F.I.R by J.S Modi .

13. Accordingly, proceedings in two charge sheets in two different Courts got stalled . One on account of stay from the Hon'ble High Court and second on account of mere pendency of the petition challenging the legality of second F.I.R wherein though earlier a specific stay was operating but which, later on, got vacated.

14. In the meantime on 16.03.2005, the Hon'ble High Court decided the petition, filed by J. S. Modi , and quashed the second F.I.R as well as the sanction accorded by the government for his prosecution. It was quashed on this ground, as put in the judgment (Supra)

“...The gravamen of the charges in the two FIRs is, in substance and truth, the same, the registration of second FIR in making fresh investigation and forwarding report under section 173 Cr. PC will be irregular and the court cannot take cognizance of the same....”

15. Therefore, purely on the issue of pendency of first FIR, the sustenance of second FIR was held illegal. However, just for the point of reference, it is to put on record that the second FIR was not registered by the investigating agency at their

own, but on the direction of Hon'ble High Court, a constitutional Court , directing registration of the case in a particular context as referred earlier. Moreover, the investigation in the case was also being monitored by the Hon'ble High Court with a direction to the Vigilance Organization to submit weekly status report of the investigation before the Ld. Registrar Judicial of the High Court. Any way, except of making reference to this material fact , this court has nothing to do with the same.

16. The said judgment of Hon'ble High Court was challenged before the Division Bench of the Hon'ble High Court and got its operation stayed . Now the Anti Corruption Court , Jammu, attempted to resume the trial on 25.07.2005, but the defence counsels did not agree to the same on the premise that the judgment of Division Bench will have bearing on the said charge sheet . This argument influenced the Ld.Anti -corruption Court , Jammu, and for more than ten years, the trial in the said court remained stalled in-spite of no such direction from the Hon'ble Division Bench which was seized of the matter with regard to deciding fate of J. S. Modi.

17. Finally, Hon'ble Division Bench upheld the judgment of the writ Court on 15.03.2016. After passing of the said judgment, proceedings in the Anti Corruption Court got revived which culminated into failure of second charge sheet , not only against J. S. Modi, but all 24 accused got discharged vide its order dated 28.10.2016. The operative part of the order passed by Ld. Special Judge Anti-Corruption Court , Jammu, as put in paras 16 and 17 are reproduced below:

16. The argument of the Ld. CPO that offences alleged to have committed by the newly added official accused arrayed in the charge sheet were based on the allegations of corruption in pursuance of larger criminal conspiracy entered by them with the partners of Firm M/S Kuldeep Singh and Co. and the same has no connection with the offences for which the FIR was registered is not tenable in

the light of principle laid down by the Hon'ble High Court in the writ petition mentioned above and in the (supra judgments) besides from the factual details on record which makes it clear that since the entire larger conspiracy was covered in the first FIR dated 05.04.1996 registered by the Crime Branch, Jammu which culminated in the charge sheet dated 25.09.1996 in the Court of Ld. Sessions Judge, Jammu against the accused mentioned therein, therefore by no stretch of imagination it can be said that judgment of Hon'ble High Court passed in writ petition mentioned above is not applicable to the rest of the accused.

17. *In the light of discussion made above and in the facts and circumstances of the case I am of the view that filing of this charge sheet against the accused on the basis of second FIR is against law since the same relate to alleged offences in respect of which first FIR had already been filed and charge sheet after investigation was produced in the Court of Pr. Sessions Judge, Jammu. Consequently, proceedings against the accused in the instant charge sheet stands truncated. The prosecution case is dismissed and the accused are discharged.*

18. It is apt to put on record that this order of Anti-corruption Court was not challenged by Vigilance Organization in the High Court. Its pertinent to mention here that the second chargesheet remained on board in the said Court for 18 long years, and finally court declared it legally unsustainable on the ground of pendency of first chargesheet. And at the risk of repetition it's to mention here that **this chargesheet was based on an F.I.R which was registered on the direction of Hon'ble High Court.**

19. As I have made an extended reference about the second chargesheet viz-a-viz its legal birth and death. Now the obvious curiosity will be to know about the fate of first F. I. R. and where it went in this long journey of 24 years. Let's know

about it from the stage I left its last reference to order dated 25.07.1997 whereby Hon'ble High Court directed Vigilance Organization to investigate case afresh and in the meanwhile stayed the proceedings in the first charge sheet based on first F.I.R., pending in the Court of Ld. Sessions Judge, Jammu.

20. The record of the first charge sheet was called by the Hon'ble High Court while disposing off the bail application of the accused Kuldeep Singh way back in the year 1997. The record remained pending in the Hon'ble High Court . On 22.07.1999, when it was brought in the notice of the Hon'ble High Court by the counsels appearing for the parties that the second charge sheet had been filed in the Anti Corruption Court, Jammu, and its further retention in the Court was of no avail . On account of it , the record pertaining to first charge sheet was sent back to the court of Ld. Sessions Judge, Jammu with the direction **“For further action in accordance with the law”**.

21. **On 10.08.2000 the Ld. Sessions Court, Jammu passed the following order in the said charge sheet :**

“the Hon'ble High Court had directed the case to be re-investigated and awaiting the same, the trial in this Court was stayed. By filing a fresh charge sheet against the accused by the investigating agency, the present charge sheet stands superceded and non-est. With regard to the same occurrence two parallel trials cannot be conducted in two different courts and no proceedings can be continued on basis of the present charge sheet which stands superceded by fresh charge sheet.

This file needs to be sent to the Court where the trial is pending since the same will need the documents in this file for the progress of the said case. As such it is directed that the record be sent to Special Judge.....”

22. Thus the Ld. Sessions Judge Jammu put a legal halt on the trial in the first charge sheet on the premise of filing of second charge sheet in the Anti Corruption Court, Jammu and sent the record of the charge sheet to Anti Corruption Court, Jammu for reference purposes.

23. Now on 28.10.2016, when the Anti Corruption Court truncated proceedings in the second charge sheet and discharged the accused on the ground of pendency of first charge sheet, the said Court also observed that **the dismissal of second charge sheet automatically revives the first charge sheet and sent its record back to the Ld. Sessions Court, Jammu from where it received the case file in the year 2000.** At the risk of repetition, it is to mention here that neither Vigilance Organization challenged this order in the Hon'ble High Court on account of discharge of the accused, nor the accused of first charge sheet challenged it where by the Ld. Anti-corruption Court revived the first charge sheet and four years have passed since then. I think both never wanted the issue to get opened again in the Hon'ble High Court.

24. Now after receiving the record of first charge sheet by the Ld. Principal Sessions Court, Jammu from the Anti Corruption Court, Jammu, same was transferred to this Court on 28.11.2016. **It is in this context, this Court has now to deal with it and decide its fate , that too after a long span of 24 years of its filing in the Court on 10.09.1996.**

25. Counsels for the accused addressed the court through virtual mode on various dates fixed in the case . Finally on 20.10.2020 case was reserved for orders today .

Heard and perused the record .

26. Counsels for the defence in the first instance have questioned the

maintainability of the present charge sheet. They have advanced the following arguments in this regard.

GROUND OF CHALLENGE

I- That in the order dated 24.07.1997 passed by Hon'ble High Court in B.A-32/97 the Hon'ble High Court while giving direction for re-investigation of the case has observed about this charge sheet based on first FIR as of "No use and consequence". And has further observed that "it will be in the interest of no body to start the trial of the accused persons." Therefore the argument built is that once Hon'ble High Court is on record to observe about this charge sheet to be of no consequence, trial cannot proceed in such a charge sheet, will be of mere wastage of precious time of the Court and contrary to the findings of Hon'ble High Court.

II- That the court of Sessions while sending the record of this charge sheet to Anti Corruption Court in the year 2000 has declared it "NON-EST". Once the Court has declared it non-est, it cannot be revived as it will amount to review of its own order which is hit by Sec. 369 of Criminal Procedure Code (As was then applicable. Corresponding 362 Central Cr. PC as applicable now).

Let's address the said arguments:

27. First and foremost observation is that the chargesheet is always based on an F.I.R. Once it's not quashed by the Hon'ble High Court, the chargesheet survives. It has to meet its destination in accordance with the provisions of the code and not by mere observations of the Hon'ble High Court made in a different context.

The said observations of the Hon'ble High Court as referred by the counsel for defence have to be taken in its correct perspective and not to be applied blindly. When a direction for re-investigation was given by the Hon'ble High Court which in the opinion of Hon'ble High Court may bring in its fold some government officials, can change the complexion of the case and crime, in that context Hon'ble High Court stalled the proceedings of the trial in the first charge sheet , pending in the Ld. Sessions Court Jammu . However, Hon'ble High Court nowhere declared this chargesheet as non-est in the eyes of the law for all times to come. The impact of this order was simply to keep the trial in abeyance in the context of re-investigation by the Vigilance Organization which may culminate into a fresh charge sheet. Moreover, this order of Hon'ble High Court dated 24.07.1997 has not to be read in isolation of the subsequent order of the Hon'ble High Court dated 22.07.1999 where by the record of this charge sheet, pending in the Hon'ble High Court since 1997, was sent back to the Ld. Sessions Court, Jammu, with the direction to proceed **“in accordance with the law”**.

28. So once Hon'ble High Court passed this direction, the earlier any observation made by it in a different context, got merged in the above quoted final direction. Thus the Ld. Sessions Court Jammu, which includes this Court, which is seized of the matter has now to proceed in the said charge sheet **in accordance with the law, as directed by the Hon'ble High Court, way back in 1999.**

29. The second argument is that any revival of this charge sheet will amount to review of the earlier order of Ld. Sessions Judge Jammu dated 10.08.2000, where by the instant charge sheet was held to **be superceded and “Non-est”**. Again the word **“Non-est”** has not to be read in isolation . Order as a whole has to be taken into account for understanding the real import of a particular term. On perusal of the

order (supra), I found that the preceding one page of the order is devoted by the Ld. Sessions Judge in projecting this fact that a new charge sheet has been filed in another Court and therefore two parallel trials on the same subject matter cannot survive in two courts. Hence Ld. Sessions Judge observed that in presence of second charge sheet , which is based on investigation directed by the Hon'ble High Court, the first charge sheet cannot survive. So in this context only, as put in the order (supra) this charge sheet was held non-est. It was an order passed in a particular context . Once that context goes, the observation made on it automatically dilutes and revives charge sheet to its original form.

30. Moreover , there is an order of revival of said charge sheet by the Ld. Anti-corruption Court as well vide its order dated 28.10.2016 whereby the accused were discharged from offence in second charge sheet with a direction of revival of first charge sheet. As said earlier, accused of said charge sheet never challenged this order of revival in the higher forum in last four years of its passing and has now attained finality.

31. Defence counsel argued that this order of revival of first charge sheet by Anti-corruption Court is of no legal avail, not binding on this Court. Question is, how can the defence plead about one part of the said order as correct where by they stand discharged, and other part bad in the eyes of law. It amounts to **“approve and reprobate”** at their part, which is not legally sustainable.

32. Apart, what stands discussed in context of revival of first charge sheet, let's address this issue on another pure legal plank. After transfer of this charge sheet to this Court, it is for this Court now to decide future course of action as all earlier orders passed by the Ld. Sessions Court are now deemed to be passed by this court on account of **legal fiction i.e. a presumption of fact assumed by a Court for**

convenience, consistency or to achieve justice.

33. The direction of the Hon'ble High Court dated 22.07.1999, whereby record of first charge sheet was sent back to Ld. Sessions Court, was **“to proceed in the matter in accordance with the law.”** That holds good then and now as well. In furtherance of the said mandate of Hon'ble High Court and in the backdrop of facts and circumstances of the case as discussed in detail in the preceding paras, I deem proper **to recall** the order dated 10.08.2000 of the Ld. Sessions Court, Jammu **“to meet the ends of justice”**, to save justice from becoming casualty on account of uncalled for legal technicalities projected by the defence counsels .

34. Fact remains that there is a difference between **review and recall**. Review is always based on merit and appreciation of the order to see whether on face of the record any error of law or fact exists and then to address it. While re-call of an order is not based on merit, does not amount to review, can be applied only in the interest of justice when the order to be re-called, **if survives, leads to absurdity, unreasonability and injustice.**

35. Even if re-call is presumed to be review, still it does not attract the bar as contained in Sec. 369 Cr. PC (as then applicable) applied to judgments only which distinguishes it from Central Cr. P.C. where , **in addition to word “judgment”, “final order” is also mentioned in the provision.** Thus in the Central Cr. P.C bar applied to both judgment and final order whereas in State Cr. P.C(as then applicable) bar applied to judgment only. And what is in debate here is an order, wherein a particular term is used in a particular context, does not amount to a judgment to attract bar as contained in Section 369 of the Code.

36. Even otherwise, the issue of **Re-call and Review** was addressed by the Division Bench of our own Hon'ble High Court in case titled **Gujjar Singh V. State**

SLJ 2011 (1) 421. What is held in para 8, 11 and 12 are reported below”

8. The sum and substance of section 367 of the Code of 1989 is that the judgment is the out come of points for determination, which is based on reasons for arriving at a decision. It is only thereafter it would qualify to be a judgment disposing of a case, which is unalterable or non reviewable in terms of section 369 of the Code 1989 (Corresponding to Section 362 of the Central Code). The appeal decided vide order dated 2nd of September 2002 does not contain the points for determination, and the reasons for the same.

11. Keeping in view the totality of facts and circumstances, examining the present case on legal aspect also, we are of the view that the order dated 2nd of September, 2002 was virtually an order of dismissal of appeal in default and not on merits, as such, can be recalled. It would not technically be termed as reviewing/altering the order as there is no such final judgment based on appreciation of evidence, which is the legal requirement for deciding statutory appeal already admitted. Substantial justice within the framework of law and established procedure is the right of the accused right from the trial till the decision of the appeal, which is continuation of trial only. It ends in conviction or acquittal depends upon the facts of an individual case, but a valuable right of the accused to putforth his case cannot be legally snatched away. Decision of a criminal appeal without appreciating the evidence undoubtedly would cause miscarriage of justice and the court can not be a silence spectator if miscarriage of justice becomes a casualty.

12. Resultantly, the application on hand is allowed as prayed for. The order dated 2nd of September, 2002 is here by re-called...”

37. In the said judgment an order of dismissal of an appeal for non-prosecution was re-called by Hon'ble High Court after 9 years of its dismissal on the said ground.

38. Similar were the findings of the Hon'ble High Court of Allahabad in case titled – **Jawaharlal Vs State of U.P in Criminal Miscellaneous No.1994 of 2014 – D.O.D – 05.08.2015.**

39. It was held in Para 23 of the Judgment (Supra) that there appears to be no bar contained in Section 362 (Central) or any other Sections of the Code for Re-calling an order.

40. In case titled **Baldev Singh & Ors. Vs State of Punjab 2011 Cr. L.J. 1746.** Hon'ble Supreme Court while interpreting the mandate of Sec.362 (Central Cr. PC) held as under:

“Sec-362 cannot be considered in a rigid and over technical manner to defeat the ends of justice. As Brahaspati has observed.

***“Kevalam Shastram Ashritya Na Kartavyo
Veninayah Yukhiheeney vichare tu dharmahaani prajayatie”***

Which means

**“The courts should not give its decision based only on the letter of the law.
For, if the decision is wholly unreasonable, injustice will follow”**

41. How unreasonable it will be that those who remained fighting to quash the second F.I.R. and second charge sheet on account of existing First F.I.R and First charge sheet, will now come out after 24 years with another argument, taking refuge

in Sec.369 of the code, not to revive First Charge Sheet as it amounts to review of the earlier order of Ld. Sessions Court Jammu . **Not sustainable.**

42. Here I want to put on record that either to go by the observations of Ld.Anti-corruption Court , Jammu with regard to automatic revival of first charge sheet on failure of second charge sheet or to apply the **principle of recall** as discussed in the preceding paras, the first charge sheet stand revived, deserves to be addressed as a **fresh** charge sheet in the Court of law.

43. What a travesty of justice it will be, when a much publicised scam of its times called Excise Scam , caused huge loss to the state exchequer, played deception with the people and Govt of the State , will get escaped from the scrutiny of law, simply on flimsy grounds as discussed in the preceding paras . Here I feel apt to quote the mandate of the judgment delivered in case **titled Hardeep Singh V. State of Punjab (D.O.D - 10.01.2014.** The constitutional bench of five Hon'ble Judges of Hon'ble Supreme Court while commenting on the role of Criminal Court has held in Para 17 as under:

17. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at this stage of investigation or inquiry even though he may be connected with the commission of the offence.

44. Being repository of public trust and justice this court will not allow injustice to survive on flimsy technical grounds, rather will make all possible efforts

within the four corners of the law , as prescribed in the Code of Criminal Procedure , to unfold what is contained there in the charge sheet, which did not get chance to be opened in the temple of justice for last 24 years.

45. As the legal maximum goes:

“Nihil quod est contra rationem est licitum”

Which means – nothing is permitted which is contrary to reason.

Accepting the argument of the defence will simply amount to giving chance to unreasonability and injustice to prevail, will not be permitted by this Court.

46. Another legal maxim to follow in this particular context is :-

Actus curiae neminem gravabit.

Means – The act of Court shall prejudice no one. This maxim is founded upon justice and good sense, and affords a safe and certain guide for the administration of the law.

47. If the order of Ld. Sessions Court Jammu will not be re-called, it will seriously affect the Govt and the society as the accused are alleged to have caused huge loss to the government of Jammu and Kashmir by deceitful means.

48. **Theodore Roosevelt** has said and I quote **“Justice consists not in being neutral between right and wrong but in finding out the right and upholding it, where ever found, against the wrong”**. Therefore, instead of putting last nail in the coffin, as desired by defence to give legal death to the first chargesheet, this Court, in the facts and circumstances of the case, has decided to bring out the corpse out of the coffin for its legal postmortem, to pinpoint the culpability of the accused, if the material on record indicted them so prima facie and also sustained on the settled principle's of law governing the field.

49. **Accordingly the charge sheet based on FIR No. 8 of 1996 stands**

revived , will now see the light of the day after remaining in deep slumbers for a long time.

NEW COURSE

50. Now the next step to decide is whether on the basis of material on record, accused deserves to be charged or not. For that to decide, this court will be guided by the well settled principles and the provision of the Code as contained in **Sec. 269 Cr. PC (Corresponding 228 Central Cr. P.C as applicable now)**. **That if from the material on record , it is presumed that crime is committed by the accused, charge has to be framed against the accused.**

51. The case set up in the charge sheet is based on a complaint filed by J.S. Modi before Sr. Superintendent Crime Branch, Jammu on 05.04.1996, in the capacity of Dy. Commissioner Excise (Executive Jammu). On receiving of said complaint, FIR No.8 of 1996 for commission of offence U/S 409,420,467,471,419,468,477-A and 120-B RPC got registered by Crime Branch and investigation ensued. The said complaint was targeted against M/S Kuldeep Singh and Co. for defrauding the government revenue by cheating and forgery.

52. The brief description of the allegations, as put in the complaint, were that country liquor vends of Jammu province were put to auction for the year 1995-96 on 28.03.1995 and the license fee was determined at Rs.3326.15 lakhs on the basis of highest bid received from different contractors. Out of the above amount, M/S Kuldeep Singh & Co. 47 AB-Gandhi Nagar, Jammu was allotted contract for an amount of Rs.13,23,00,000/- for the following groups namely R.S. Pura, Akhnoor, Samba, Kathua, Sunderbani and Udhampur. The above firm was represented by accused No.4, Sh. Kuldeep Singh S/O Late Col. S. D. Jamwal R/O 47-AB Gandhi Nagar, Jammu. That as per practice, a contractor has to deposit fortnightly

installments into the government treasury and thereafter on the basis of remittances, country liquor permits were to be issued. The said contractor deposited the installments and obtained the permit after furnishing the treasury receipts. In all an amount of Rs.13,23,00,291/- was deposited by the contractor during the year on account of license fee and in addition to that an amount of Rs.2952,147/- was remitted as penal interest on account of belated payments. As financial year 1995-96 was to close, as such a perusal of the file of contractor was made by the complainant. During the scrutiny of the files of above named contractor, some treasury receipts were found doubtful and same were singled out for further scrutiny. These receipts pertained to Sadder Treasury Town Hall, Jammu and J&K Bank, Branch Govindsar Kathua. A letter in this regard was written bearing No. 15084 EXC dated 29.03.1996 addressed to Treasury officer Sadder Treasury and Branch Manager J&K Bank Govindsar, Kathua and treasury receipts were sent for verification. On 03.04.1996 verification report was received from treasury officer Sadder Treasury, Jammu. As per the verification report, eight Treasury receipts were not verified . Further communication by the Treasury Officer further cleared about the said treasury receipts. It was concluded that the above named contractor defrauded the government revenue by an amount of Rs.55,00,000/- by an act of forgery and cheating in respect of treasury receipts of Sadder Treasury Jammu, whose copies have been put on record and enclosed with the charge sheet attested by the complainant in the capacity of Deputy Excise Commissioner (Executive) Jammu.

53. Similarly a verification report was received from J&K Bank Govindsar Kathua which revealed that tampering and forgery has taken place in the cash receipts which have been referred to the said bank for verification. It was found on verification that there was a huge variation in four receipts, whose details have been put in the complaint. It was found that there was a variation of around Rs.

42,50,000/- amount. Thus, the total loss caused by Kuldeep Singh and Co. to the government was Rs.97,50,000/- by cheating and forgery.

54. On the basis of this complaint , investigation started. It was revealed in the investigation that on account of highest bid of M/s Kuldeep Singh and Company the contract of country liquor vends was given to it and the bid amount was fixed at Rs. 13,23,00,000/-. The said company deposited security amount @ Rs.2,05,35,000/- in the office of Excise Department, Jammu and the Company was allotted 17,35,650 bulk liters quota of country liquor for the year 1995-96. The bid money was to be deposited by the company every fortnight in 24 installments in the year in the account head 0039 of the Excise Department through Bank and Treasury receipts. On presenting these bank and treasury receipts on every fortnight in the D.C Excise Office, Jammu the company had to get Quota Permit of the equivalent quantity of liquor and thereafter on paying "Still Head Price" had to get country liquor for sale at different vends. The company started depositing the bid amount fortnightly in Sadar Treasury Jammu , Sub-Treasury Vijaypur, J&K Bank Govindsar Kathua and some other treasuries and banks. From these banks and treasuries, the company was collecting vouchers and treasury receipts and presenting them at Excise Office Jammu with a requisition memo for grant of permit for purchasing liquor from Warehouse.

55. It further revealed in the investigation, as put in the chargesheet , that on account of license fee and still head price, the company had to incur Rs.72 on one liquor bottle. On the other hand English liquor bottle available in the market was at Rs.25/-. People started preferring English liquor over country liquor. As country liquor sale was going down in the market, the accused company reduced its sale value from Rs.72/- to Rs.55/-, which started causing loss to the Company. Now to cope up the loss coupled with the greed to earn more profit, accused persons who were partners of the firm Kuldeep Singh and Company namely Kuldeep Singh, Rashpal

Singh (Dead), Hans Raj Mangotra (Retd. IAS Officer) , Reepu Daman (Chartered Accountant) and partner in the firm and Sunil Mattoo, the employee of the firm, hatched a conspiracy to forge the treasury receipts and bank vouchers which were to be presented in the Excise Office for getting permit of the liquor . This way by not depositing the actual installments of bid money, they will get one bottle liquor of the Rs.12/- which was the still head price and will sell it in the market @ Rs.55/- so as to cope up the loss as well as to enjoy extra benefit on account of this forgery and cheating.

56. In this illegal pursuit, on 31.05.1995 the company presented first forged treasury receipt and voucher No.72 of Rs.10,00,000/- in the office of Excise, Jammu and got liquor permit of the requisitioned quantity and continued with the same illegal practice during the contract period 1995-96. Thus a total of Rs.2,99,80,000/- bid amount was not deposited by the accused partners . On account of this fraud committed by them, 3,93,300/- bulk liters country liquor they got from Excise Department, Jammu without depositing the said bid amount.

57. It was also found during investigation that before registration of said F.I.R, the complainant of the case J.S. Modi, D.C. Excise Jammu, sent a communication to Manager J&K Bank Govindsar, Kathua for verification of 61 items against the consideration amount of Rs.2,12,25,014/-. Same was sent through Inspector Narinder Sharma (Accused) of the Kathua Range, and Sardari Lal (Accused), Inspector Eradication Wing, to obtain the verification report from the said Bank. However, both these officials of the department, in order to satisfy their greed, joined hands with the partners of M/S Kuldeep Singh and Company, did not get 61 items verified from the bank but prepared a forged verification report in-conivance with accused Sunil Mattoo, who drafted the same, put forged seals and signatures, and submitted it in the office of D.C. Excise office, Jammu. Thus provided an illegal

benefits to the accused partners 1 to 11 of the firm.

58. During investigation the forged bank receipts, verification report and hand writing samples of Sunil Matto accused and that of Ripu Daman were obtained and sent to FSL for expert opinion. And it was opined by the FSL experts that the hand writing on the questioned documents were that of the accused Ripu Daman and Sunil Matto. It was specifically opined by FSL that the forged verification report of the Bank was in the hand writing of accused Sunil Mattoo.

59. It was also found in the investigation that accused No.13 Surinder Singh (Now dead) , who was Senior Assistant Incharge Excise Branch D.C. Excise Office, Jammu, was hand-in-glove with the accused company, was himself scrutinising the forged receipts and vouchers of the company and issuing them permits of the liquor.

60. It was also found that accused No.11 Mool Raj (Now dead) was also one of the partner of M/S Kuldeep Singh & Company and during 1995-96 his signatures were also found present on the Partnership Deed dated 07.04.1995. He was kept as an Accountant in JK Warehouse Gandhi Nagar by accused Rashpal Singh. He was mostly concerned with getting information about the cash of the company, so that all partners in the partnership deed to get information of the same. It was also found in investigation that accused Mool Raj along with accused Randhir Singh who is brother of accused Rashpal Singh (Now Dead) have oftenly participated in the meetings of accused partners of M/S Kuldeep Singh and Company in the year 1995-96 where strategies were being prepared to get more and more illegal profits and thus both were found part of the conspiracy.

61. It was also found during the course of investigation that the accused company deposited 90 lakhs rupees in the account head 0039 of the Excise Department which further established the collective guilt of the accused of causing fraud of Rs.2,99,80,000/- in the bid amount.

62. It was also surfaced in the investigation that there was one more partnership deed of M/s. Kuldeep Singh and Company received through Post . As per the photostat copy of said partnership deed, there were 49 partners in this firm, among them some of the partners were accused partners in the other partnership deed comprises of accused as its partners. These accused partners put their money along with silent partners in getting the contract from the Excise Department. The silent partners were depositing the money in the Account of Kuldeep Singh and Co. to get the permit from D. C. Excise. However, the accused partners deceived the silent partners also and siphoned of their money as well.

63. Few facts require to be cleared. Accused 1 to 10 are the partners in the firm which is created by virtue of Partnership Deed dated 07.04.1995 , executed immediately after the contract between Kuldeep Singh and Company with that of Excise Department. Accused No.2 was the partner in Eastern Traders by virtue of partnership deed executed on 06.10.1994 which was registered in the court of law. Accused No. 2 became partner of accused firm by virtue of partnership deed dated 07.04.1995 on account of joining of his firm Eastern traders through its partner S.S Jamwal . It is inferred from the charge sheet that accused No.1 to 11 were the active partners of the firm who were found involved in forgery and deceit to defraud the government.

64 Accused No.12 Sunil Matto was the employee of the firm who was involved in forging these all receipts and vouchers on behalf of the firm. Accused 13 to 15 were the officials of the Excise Department who inconnivance with the accused 1 to 11 committed the crime whereas accused 16 who is the brother of accused No.5 (Dead) was actively participating in all these meetings of the accused partners where the strategies were planned and conspiracies were being hatched to defraud the government by presenting forged and false treasury receipts and vouchers.

65. Counsel for the accused has advanced an argument that as the partnership deed dated 07.04.1995 was unregistered in the court of law, therefore does not attract criminal liability of the partners. I do not agree to this argument for the simple reason that registration of the firm is registered only for seeking claim by one partner against the other with regard to inter-se disputes of the firm . It has no bearing on the criminal liability of the firm and its partners can be made liable for the alleged crime .

66. Here I feel profitable to quote extracts of the judgment delivered by Hon'ble High Court of Delhi in the case titled Smt. Rani Kapur Vs M/S Silver Mount (D.O.D – 07.07.2012). What is held in para No.6 and 13 are reproduced below:

6. Following the decision of the Supreme Court in BSI Ltd. Vs Gift Holdings pvt. Ltd. In the decision reported as ILR 2003 KAR 4325 Beacon Industriesw s. Anupam Ghosh it was held ;

5. A careful reading of Section 69(2) of the Partnership Act clearly shows that an unregistered partnership firm is barred from filing a civil suit and there is no bar as such to file a private complaint and it is purely criminal liability on the part of the person who has issued the cheque . Even if the cheque issued by a partner of an unregistered firm for legally recoverably debt or otherwise and if such cheque dishonoured when it was presented for encashment , it amounts to a criminal liability . Therefore the dismissal of a complaint by the trial court by relying on the decision of the Andhra Pradesh High Court referred to above is incorrect . Whenever a complaint is presented under Section 138 of the Negotiable Instrument Act it is the duty of the Ld. Magistrate to take note of the cognizance and record the sworn statement of the complaint and his witnesses and

after hearing it there is any prima facie case then it is the duty of the court to issued summons to the accused.

6. *In the case of Abdul Gafoor Vs. Abdur Rehman (1999 (4) Crimes 1998] the Kerala High held that an unregistered firm can prosecute a complaint under section 138 of the Negotiable Instrument Act and the effect on non registration of a firm under section 69 of the Partnership*

Act is aplicable only to case involving civil rights .

Further the Supreme Court in the case BSI Ltd. Vs. Gift Holding Pvt. Ltd (2000 SCC (Cri) 538] has has held that :

“ ...A criminal prosecution is neither for recovery of money nor enforcement of any security etc . Section 138 of the N.I Act is penal provision the commission of which offence entails a conviction and sentence on proof of the guilt in duly conducted criminal proceedings . Once the offence under section 138 is completed the prosecution proceeding can be initiated nor for recovery of the amount covered by the cheque but for bringing the offender to penal liability .” Again in the case of Gurcharan Singh V. State of U.P. [2002 (4) Crimes 165.] the Allahabad High Court has followed the above said judgment of the Supreme Court. Therefore, in view of the above decisions of the Supreme Court as well as of the other High Courts, contention of the respondent that filing of a criminal complaint by a partner of an unregistered firm is hit by Section 69(2) of the Partnership Act cannot be accepted. The said Section has no application to the criminal cases. Under these circumstances it could be said that section 69 (2) of the Partnership Act is applicable only where the civil rights

are invoked and not in criminal cases. Non registration of the firm has no legal bearing on the criminal cases. Hence the findings recorded by the trial court is totally in correct and illegal and the same is liable to be set aside.

13. Following the decision of the Supreme Court in BSI Ltd. (Supra) this court is of the considered view that the decisions of the Kerala High Court, Karanata High Court and Punjab and Harayana High Court as noted above laid down the correct law. Thus, the issue raised by Ld. Counsel for the petitioner that since the complainant respondent is not a registered firm it cannot maintained a complaint U/Sec. 138 of the N.I. Act. Petition and application are dismissed.

67. **EPILOGUE**

Of the entire discussion made in the preceding paras, what prima facie comes to the fore is that crime is presumed to have been committed by the accused with the intention to defraud the government so as to satisfy their greed to earn more by deceitful means. However, what's unfortunate is that the stage of unveiling the crime and charging the accused for commission of offences has come so late that in the meantime six out of sixteen accused have died and thus did not get exposed to the writ of law. However, as the custodian of law and justice, Court has not to move with the number of the accused left surviving in the case, but to ensure certainty of law to prevail, even belatedly, so that a message must travel across the society that law has to prevail sooner or later and no one can escape from the clutches of law, for all times to come, provided he is alive.

68. Finally, from the perusal of the chargesheet and documents submitted therewith by the prosecution and on consideration of the submissions made by the Ld. Counsels appearing for the accused, it appears that, prima facie offences U/Ss 409,

420, 467, 468, 471, 477-A, 120-B RPC are made out against the accused and in the given facts and circumstances of the case, there is no scope for the discharge of the accused.

69. As on account of pandemic, Covid 19 , the physical hearing of the case in the courts is replaced by virtual hearing. Therefore, the counsel for the accused are informed of this order through virtual mode.

70. Put up this file for framing of charges against the accused on 19.11.2020.

Announced.
28.10.2020

(Tahir Khurshid Raina)
Additional Sessions Judge,
Jammu.
[UID No : JK00055]