# HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 15.07.2025
Pronounced on: .07.2025

**CrlA(D) No. 06/2022**
**CrlM 71/2022**

**Union Territory of J & K Through**
**Police Station Bandipora**

**…Appellant(s)**

Through: Ms. Maha Majeed, Assisting Counsel vice Mr. Faheem Shah, GA.

**Vs.**

1. **Ameer Hamza Shah S/O Gh. Mohi Ud Din Shah R/O Qull Muqam Bandipora.**
2. **Rayees Ahmad Mir S/O Mohammad Maqbool Mir R/O Kehnusa Bandipon**

**...Respondent(s)**

Through: None.

**CORAM:**
**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**
**HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**JUDGMENT**

**Sanjay-Parihar-(J)**

1. The appellant-UT of J&K is aggrieved of the order of discharge drawn by the Court of Additional Sessions Judge (Special Judge) for trial of offences under ULA(P) Act for Districts of Baramulla, Bandipora, and Kupwara, in terms whereof, respondents, who were facing prosecution for offences under Section 13 ULA(P) Act in FIR No. 41/2015 of Police Station Bandipora stood discharged by the trial judge.

2. That impugned order is against law, as the trial court has resorted to conducting enquiry at charge stage and sifted the evidence as if it was finally deciding the challan. The court has discharged the accused without properly examining the contents of the charge and material

collected thereto. The discharge of the respondents has resulted in grave miscarriage of justice, and by way of an erroneous order, respondents have been discharged. The court was required to evaluate the material placed before it only for the purpose of charge/discharge but not to sift the evidence in its totality.

3. This appeal has been laid in terms of Section 21 of the NIA Act, for which no leave was required because the order was otherwise appealable in terms of Section 21, however, the delay in filing the appeal stood condoned.

4. We have heard the appellants, whereas respondents, despite service, have chosen not to appear and argue the matter. So much so, on previous date of hearing also, the respondents were absent. Today again, when the matter was called, none appeared on behalf of the Respondents.

5. We have examined the record of the trial court as well.

6. On the strength of case FIR No. 41/2015, respondents were accused of an incident that took place on 20th March 2015, when after Friday prayers they delivered anti-national speech to general public that had gathered to offer prayers, with the intention to instigate the general public against sovereignty of India and to call for separation of the then state of Jammu and Kashmir from rest of India, for which the aforesaid case was registered and investigation set in motion**.**

7. During the course of investigation, offence under Section 19 of ULA(P) Act was found not made out. Instead, the respondents were challaned for offence under Section 13 ULA(P) Act, as there was substantial evidence against them, for which respondents were arrested

and subsequently released on bail. Whereas, after investigation, case was closed as challan and sent for sanction, that was received from the competent authority directing production of charge sheet against the respondents, who by that time had turned absconder.

8. Subsequently, on filing of the charge sheet, they were proceeded under Section 512 Cr.P.C, which was in vogue at that time. Initially, the charge sheet was laid before Special Judge, NIA at Srinagar, but with the creation of Special Court at Baramulla for trial of ULA(P) cases for Districts of Baramulla, Bandipora and Kupwara, in terms of Notification dated 1st March 2020, the case was sent to the designated Court at Baramulla.

9. Subsequently, both respondents were arrested following the execution of warrants, and the matter was finally heard at the stage of charge/discharge.

10. Vide order dated 29th September 2021, the trial court dismissed the charge sheet by holding that, except raising of anti-national slogans, the respondents did not act in any manner prejudicial to the integrity of the country. In absence of any proof that any law-and-order problem had arisen pursuant to the raising of anti-national slogans by the respondents, there appears to be no material to warrant their involvement in an unlawful activity.

11. The trial court, therefore, was of the view that offence under Section 13 ULA(P) Act was not made out. It appears that the trial court had placed reliance on a judgment passed by the Apex Court in case titled as ***"Balwant Singh & Ors v. State of Punjab"*** reported as ***1995 (3) SCC 214,*** wherein Sections 124-A and 153-A of the Penal Code were

under consideration, and, it was held that the two offences were not made out because raising of anti-national slogans did not incite any violence or cause harm to the public at large or bring enmity between different religions or classes.

12. The appellant's main argument is that the trial court has failed to apply its mind to the evidence available before it to frame an opinion regarding charge/discharge, and that it has travelled beyond the mandate, resulting in sifting of evidence which could not have been done. The prosecution ought to have been given liberty to adduce evidence because there was sufficient material on record to warrant the view that respondents had indulged in commission of an unlawful activity.

13. Unlawful activity in terms of the Act of 1967 is defined in clause (o) of Section 2, which for convenience is reproduced hereunder:

> "o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),--
> (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
> (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India;.

14. Respondents were not related to any unlawful association or banned organization, and that was also not the case of the appellant before the trial court, however, they were acting in individual capacity and had raised anti-national slogans.

15. HC Ghulam Rasool, HC Gulzar Ahmed, HC Mohammad Saifi, Selection Grade HC Abdul Jabbar, and HC Ijaz Ahmed were on duty on 20th March 2015 in Bandipora market when they found the respondents, who were stated to be working for separatist organization, appeared in front of Masjid after Friday prayers where a large number of people had gathered to hear them. There, the respondents are accused of having called for separation of Jammu and Kashmir from rest of India because they claimed that Jammu and Kashmir has been illegally occupied and for its separation, they were inciting the general public to initiate struggle for achieving the objective of separating Jammu and Kashmir from the Indian Dominion.

16. Whereas, the unlawful activity would include any claim to bring out, on any ground whatsoever, the cession of a part of the territory of India from the Union or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession.

17. Before evaluating the validity of the discharge order, impugned herein, it is desirable to note the principles that are to be followed by trial judges while considering the charge sheet at the stage of charge/discharge.

18. In "**Union of India v. Prafulla Kumar Samal and Another", AIR 1979 (3) SCC 4,** the Hon'ble Supreme Court, summarised the

principles governing framing of charge under Section 227 CrPC as follows:

> "10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:
>
> (1) The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
>
> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.
>
> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
>
> (4) That in exercising his jurisdiction under Section 227 of the Code, the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry

> into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

19. The Apex Court in the aforesaid judgment had followed the principles laid down in **"State of Bihar v. Ramesh Singh", AIR 1977 (4) SCC 39.** In both cases, it was held that if there is a strong suspicion which leads the court to presume that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

20. In "**M.E. Shivalingamurthy v. Central Bureau of Investigation**", **AIR 2020 (2) SCC 768**, again the principles were reiterated that while deciding discharge, only the material brought on record by the prosecution, both in the form of oral statements and documents, have got to be considered. The accused is entitled to discharge only if the statements recorded under Section 161 CrPC, which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted without being challenged in cross-examination or rebutted by the defence, cannot show that the accused committed an offence, there a case of discharge can be said to be made out.

21. However, where there are two possible views, one giving rise to mere suspicion and the other to a grave suspicion, the trial judge would be justified in refusing discharge if satisfied that strong suspicion exists. It was further reiterated that the court must, without making a roving enquiry into the pros and cons, consider the broad probabilities of prosecution case and the material before it. The probative value of the material so placed cannot be assessed at that stage. What is required is the existence of some essential material giving rise to strong suspicion necessary for drawing a charge and refusing discharge.

22. In view of the aforesaid principles, we proceed to examine the case of the prosecution as projected before the trial court. A reading of the charge sheet would show that the respondents were found inciting general public that had gathered after Friday prayers on 20th March 2015 at Bandipora market to take up a struggle in order to effect secession of Jammu & Kashmir from the Union of India. They were propagating that Jammu & Kashmir is an occupied territory and exhorting the persons present there to initiate a struggle to achieve the objective of its separation from the Indian dominion.

23. These accusations, coupled with the statements made by witnesses under Section 161 CrPC, prima facie bring the allegations within the ambit of "unlawful activity" as defined in Section 2(1)(o) of the Unlawful Activities (Prevention) Act, 1967, because the respondents were calling for and inciting a struggle for cession of J&K from the Union of India an activity punishable under Section 13(1) of the Act.

24. Section 13 specifically states that whoever takes part in, incites, advocates, or abets unlawful activity shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine. Such accusations against the respondents squarely fall within the ambit of Section 13(1), because, as per the statements recorded under Section 161 CrPC, they were advocating and inciting the commission of an unlawful activity by asserting that J&K is illegally occupied and must be separated from the Indian Union, thereby advocating secession.

25. The trial court was of the view that since the respondents were merely raising slogans with no activity of inciting violence, Section 13 was

not applicable. This view was palpably wrong, because what Section 13(1), read with Section 2(1)(o) of the UAPA, relates to is the commission of an unlawful activity, and the allegations raised against the respondents were squarely covered within the definition of "unlawful activity. The trial court appears to have not appreciated the version of the witnesses under Section 161 CrPC, who were present at the spot when the occurrence is stated to have happened.

26. Reliance by a trial Court on **"Balwant Singh and Another vs State of Punjab", (1995) 3 SCC 214** was uncalled for because in that case the accused had raised slogans in a crowded place after the assassination of the then Prime Minister. It was alleged that the raising of slogans had attracted Section 124-A and 153-A IPC. The former related to the bringing or attempting to bring hatred and disaffection towards the Government established by law. The latter related to the offence of promoting enmity on grounds of religion or race. The facts in that case were clearly distinguishable from those before the Trial Court. There is a clear distinction between the essentials of Section 124-A, 153-A IPC, and the term "unlawful activity" as defined in Act of 1967, as amended from time to time. Inasmuch as the facts *supra* was based upon a matter that had come before the Hon'ble Apex Court by way of appeal, where the accused had already been convicted but in the present case the matter was still at infancy and the prosecution was yet to adduce evidence in support of the accusations raised under Section 13 of the Act. Therefore, there is no parallel to case in hand and the facts of the *Balwant Singh supra*.

27. For the aforesaid reasons, we find that the impugned order is not sustainable on any count as it suffers from non-application of mind and erroneous application of law, thus, on the face of it, is perverse and is, therefore, set aside.

28. The chargesheet shall stand restored with the direction to the trial court to proceed with framing of charge against the respondents for offence under Section 13 of ULA(P) Act, and thereafter proceed to dispose of the challan in accordance with law.

**(SANJAY PARIHAR)**
**JUDGE**

**(SANJEEV KUMAR)**
**JUDGE**

**SRINAGAR:**
.07.2025
"Hilal"

Whether the Judgment is approved for reporting? Yes