IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 10.12.2025
Pronounced on:26.12.2025
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Whether the operative part or full judgment is pronounced: ***Full***

CRM(M) No.90/2024

ZAFFAR ABBAS DIN

...PETITIONERS/APPELLANT(S)

Through: - Mr. Shariq J. Reyaz, Advocate, with
Mr. Wahid, Advocate.

Vs.

UT OF J&K & ORS. ...RESPONDENT(S)

Through: - Mr. Ilyas Nazir Laway, GA-for R1 & R2.
Mr. Jahangir Iqbal Gani, Senior Advocate, with
Ms. Gousia, Advocate-for R3

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner, through the medium of present petition, has invoked jurisdiction of this Court under Section 482 of the Cr. P. C for challenging two FIRs, one being FIR No.78/2020 for offences under Section 457, 380, 180 IPC and the other being FIR No.133/2023 for offences under Section 192, 420, 468 and 471 of IPC, both registered with Police Station, Anantnag. These FIRs have been lodged under the directions of the Jurisdictional Magistrate issued in exercise of powers by the said Magistrate under Section 156(3) of the Cr. P. C.

2) In the application, which has resulted in lodging of impugned FIR No.78/2020, it was alleged by respondent No.3 (the complainant) that he is a tenant of the petitioner in respect of the premises situated on the ground floor of the building known as 'Enso Tower' near District Police Lines, Khanabal Anantnag. It was further alleged that the demised premises has been locked on 22nd January, 2019, and all the goods belonging to the complainant including the stocks worth crores, furniture, fixtures, computerised billing and accounting systems, books of account and cash being the sales conducted on 22nd January, 2019 are lying in the premises. It was also averred in the application that respondent No.3 has gone in appeal before the High Court in terms of Section 37 of the Arbitration and Conciliation Act, which is pending adjudication and in the said appeal, the High Court vide order dated 20th February, 2020, has directed maintenance of status quo on spot regarding the premises in question and the said stay order has been extended further. It was also alleged in the application that on 3rd April, 2020, the complainant received an information that the petitioner has, while taking undue advantage of the present lockdown, entered into the premises along with his supporters and illegally removed the goods and other material belonging to respondent No.3 from the premises. On the basis of these

allegations and under the directions of the Jurisdictional Magistrate, FIR No.78/2020 for offences under Section 457, 380, 188 of IPC came to be registered.

3) In the application which has culminated in registration of impugned FIR bearing No.133/2023 under the directions issued by the Jurisdictional Magistrate, it has been alleged that respondent No.3 (complainant) has a dispute with the petitioner in respect of ground floor at Enso Towers situated at Khanabal, Anantnag, and that the said dispute has landed before the Arbitral Tribunal presided over Hon'ble Mr. Justice Mohammad Yaqoob Mir (former Chief Justice of High Court of Meghalaya) who has been appointed as Arbitrator by the orders of the High Court to resolve the disputes between the parties. It has been alleged that during the Arbitral Proceedings, Municipal Council, Anantnag, was directed to place before the Arbitral Tribunal the notice issued by the said Council requiring the clearance/cleaning of the tower by disinfectant spray. It has been alleged that the Administrator, Municipal Council, Anantnag, responded by placing a forged notice before the Tribunal in which name of respondent No.3 had been inserted post-facto with a view to avoid a likely inference that the Municipal Council had acted in league with the petitioner – landlord to cause illegal dispossession of respondent No.3 from the demised premises for

circumventing the effect of status quo order passed by the High Court on 20.02.2020. It was alleged that this misdemeanour on the part of the petitioner and Municipal Authorities has been given the colour of official duty. It was also stated in the application that the petitioner had already placed the aforesaid notice in original before the Tribunal along with his reply to the arbitration petition and in the original notice, there was no mention of name of respondent No.3. Thus, comparison of the notices would sufficiently demonstrate that the notice placed before the Arbitrator by the Administrator, Municipal Council, Anantnag, was forged by manipulating in it the name of respondent No.3 as an addressee. On the basis of these allegations and under the directions of the Jurisdictional Magistrate, impugned FIR No.133/2023 for offences under Section 192, 420, 468, 471 of IPC has been registered.

4) The petitioner has challenged both the impugned FIRs by was of the present petition on various grounds. So far as FIR No.78/2020 is concerned, it has been contended that the ingredients of the offences alleged therein are wholly non-existent. It has been contended that the dispute which forms the subject matter of the said FIR is also the subject matter of arbitration proceedings but respondent No.3 has given criminal colour to a purely civil dispute by lodging the

aforesaid FIR. It has been submitted that the learned Arbitrator has, vide his arbitral award dated 21.01.2023, after determination of the issues arising between the parties, awarded a sum of Rs.3,76,38,510.00 in favour of respondent No.3 and the said award is subject matter of challenge before this Court.

5) According to the petitioner, on account of closure of the premises for more than two years and in the wake of Covid-19 Pandemic, the Municipal Authorities took cognizance of letter dated 15.03.2020 issued by the local Masjid Committee wherein complaints of foul smell emanating from the premises were taken note of and, accordingly, notice dated 26.03.2022 was issued to the petitioner directing him to clean the premises. It has been submitted that the premises in question was cleaned by the officials of the Municipal Council and the material that had expired and was the source of foul smell was removed and disposed of by the Municipal officials. It has been contended that initially a status report came to be filed by the police on 17.06.2022 wherein it was stated that there is no involvement of the petitioner in the alleged offences but respondent No.3 moved an application before the Investigating Agency and the case has been re-opened to be investigated through a Special Investigation Team.

6) Regarding FIR No.133/2023, it has been contended that the said FIR is manifestly illegal and unlawful. It has been submitted that without adhering to the procedure prescribed under Section 195 read with Section 340 of the Cr. P. C, no investigation in the said FIR could have been initiated by the police. Reliance in this regard has been placed on the judgments of the Supreme Court in the cases of **Narendra Kumar Srivastava v. State of Bihar,** (2019) 3 SCC 318, and **M/S Bandekar Brothers Pvt. Ltd. & anr. V. Prasad Vassudev Keni etc.** AIR 2020 SC 4247.

7) The petition has been contested by both the official respondents as well as by the private respondent. In his reply, respondent No.3 has submitted that the Commissioner appointed by the Arbitral Tribunal during arbitral proceedings had visited the spot and submitted his report dated 06.10.2022, wherein it was clearly mentioned that the articles, merchandise, small medium and other items were dumped on the first floor of Enso tower in a very haphazard manner. It was further reported by the Commissioner that it was evident that the shelves were brutally broken, some of the broken shelves were kept preserved on the rear side of the ground floor and on the first floor the articles were mixed and dumped in a haphazard manner. As per the report of the Commissioner, stocks worth Rs.54,18,740/ were lying in the

premises but not in a good condition and it was also found by the Commissioner that the ground floor merchandize had been removed, mixed and dumped on the first floor of Enso tower. It has been contended that the order of status quo was operating but in spite of this, the officials of the Municipal Council at the behest of the petitioner succeeded in removing the articles etc. lying in the premises which was under the occupation of respondent No.3. It has also been submitted that the petitioner in connivance with the officials of Municipal Council, Anantnag, forged a notice with a view to mislead the Arbitral Tribunal and project that before removal of the items from the demised premises, notice was issued to respondent No.3. Thus, a false document has been created at the behest of the petitioner which has given in evidence before the learned Arbitral Tribunal.

8) The official respondents have also filed their status report in which they have reiterated the allegations made in the impugned FIRs. They have also produced the Case Diaries of both the impugned FIRs, according to which the offences under Section 457, 380, 188 IPC stand established against the petitioner and one Mohammad Ismail, former Executive Officer, Municipal Council, Anantnag, in respect of FIR No.78/2020 whereas investigation in FIR No.133/2023 is stated to be at its inception and, in fact, it has not progressed

much because of the interim order passed by this Court on 11.03.2024.

9) I have heard learned counsel for the parties and perused record of the case including the Case Diaries.

10) In the first instance, it would be appropriate to deal with the grounds of challenge with regard to impugned FIR No.78/2020. The star ground that has been projected by learned counsel for the petitioner for impugning the said FIR is that the dispute between the parties is purely of civil/commercial nature which has resulted in passing of an arbitral award in favour of respondent No.3, which is presently under challenge before the High Court. It has been contended that once the subject matter of the impugned FIR is subject matter of determination in the arbitral proceedings, the investigation in the impugned FIR cannot proceed. It has also been contended that the goods from the demised premises were removed by the Municipal authorities as the same had expired and were emitting foul smell. According to the petitioner, because of the situation that had arisen on account of Covid-19 Pandemic, it had become necessary for the Municipal Authorities to take action and the petitioner cannot be held liable for the same and it is for this reason, that the initial Investigating Officer had given a clean chit to the petitioner.

11) The first issue that is required to be determined is as to whether there is any statutory or legal bar in undertaking investigation in respect of the offences which arise out of the facts that give rise to a claim under civil law. It is also to be ascertained as to whether respondent No.3 (complainant) has given a criminal colour to a purely civil dispute. The legal position in this regard has been explained by the Supreme Court in the case of **M/S Indian Oil Corporation vs. M/S NEPC India Ltd. & Ors** (2006) 6 SCC 736. In the said case, the Supreme Court has laid down the principles which guide the Courts in ascertaining as to whether or not allegations regarding a commercial dispute would give rise to a criminal action apart from the civil remedy. These principles are reproduced as under:

> *(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*
>
> *For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.*
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> *(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.*
>
> *(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The*

> *power should be used sparingly and with abundant caution.*
>
> *(iv)The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.*
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> *(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

12) In **K. Jagdish** vs **Udaya Kumar G. S.** (2020) 14 SCC 552, the Supreme Court has, after analysing the legal position about maintainability of criminal prosecution in a case where remedy under civil law is also available, observed that it is well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.

13) Recently the Supreme Court in the case of **Kathyayini** vs **Sidharath P.S. Reddy and Ors,** 2025 SCC online SC 1428,

after surveying the legal position on the issue, held that pendency of civil proceedings on the same subject matter involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons.

14) From the foregoing enunciation of law on the subject, it is clear that the mere fact that a complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available, is not by itself a ground to quash the criminal proceedings. It is only if it is shown that the complaint even if taken at its face value does not disclose commission of any offence or if it is found that criminal proceedings have been initiated with malafides/malice for wreaking vengeance, that the same can be quashed.

15) In the light of the aforesaid legal position, let us now proceed to analyse the facts of the present case. As already stated, in the complaint, which has become basis for lodging FIR No.78/2020, respondent No.3 had alleged that the premises which had been leased out by the petitioner to him was lying locked from 22nd January, 2019, and the premises was full of stocks worth crores of rupees, furniture, fixtures, computerised billing and accounting systems, books of account and cash sales of 22nd January, 2019. It has also

been alleged that there was a status quo order operating that had been passed by the High Court.

16) Apart from the above, it is an admitted fact that a Commissioner was appointed by the learned Arbitral Tribunal during the arbitral proceedings between the parties who visited the spot and submitted his report. In his report, he has categorically stated the merchandize lying in the demised premises had been removed, damaged and scattered. It was also reported by the Commissioner that the shelves in the demised premises were brutally broken and the articles were found removed and kept in the first floor which is not the demised premises but is the premises belonging to the petitioner. Thus, the allegations made in the complaint, on the basis of which the impugned FIR No.78/2020 has been lodged coupled with the other material on record, prima facie, suggests that the goods belonging to the complainant have been removed from the demised premises. One can understand that those goods which were the source of foul smell had to be removed for the purpose of sanitising the area but the removal of even other goods from the ground floor of the premises which was under the occupation of respondent No.3 and their transfer to other portions of the same building which are under the ownership and occupation of the petitioner definitely comes within the mischief of offence of

theft in a dwelling house. Similarly, allowing the Municipal Authorities to remove the goods despite there being an order of status quo in a case in which the petitioner was a party, that too without consent of respondent No.3, makes the matters worse. All these facts and circumstances disclose commission of cognizable offences which are required to be investigated.

17) Respondent No.3 may have been granted compensation by the Arbitral Tribunal for the value of damaged goods, nonetheless, causing damage to these goods and retaining/removing a portion of the goods clearly discloses commission of cognizable offences. Therefore, it is not a case where the transaction underlying the impugned FIR gives rise only to civil claims but it is a case where it gives rise to both civil claim as well as criminal offences. It is, therefore, not open to this Court to quash the impugned FIR No.78/2020. Once it is apparent from the material on record that cognizable offences are disclosed, it is the statutory duty of the Investigating Agency to investigate the case and take it to logical conclusion. During the course of investigation, the Investigating Agency shall also be at liberty to investigate the veracity and authenticity of the defence put up by the petitioner in this petition.

18) That takes us to the impugned FIR No.133/2023. The crux of the allegations levelled in the said FIR against the petitioner is that during the arbitral proceedings, Administrator, Municipal Council, Anantnag, had placed a forged notice before the Arbitral Tribunal in which name of respondent No.3 had been inserted post-facto with a view to avoid a likely inference that the Municipal Council had acted in league with the petitioner to cause illegal dispossession of respondent No.3 from the demised premises with a view to circumvent the order of status quo passed by the High Court. On the basis of these allegations, the Investigating Agency has registered FIR for offences under Section 192, 420, 468 and 471 of IPC.

19) So far as the offence under Section 420 of IPC is concerned, there has to be a fraudulent and dishonest inducement on the part of a person and thereby the other party must have parted with his property. In the present case there is no allegation in the impugned FIR No.133/2023 that there was any inducement, much less fraudulent or dishonest inducement, on the part of any person which has resulted in parting with property by respondent No.3. So, ingredients of offence of cheating are not made out even if the allegations levelled in the aforesaid FIR are taken to be true at their face value.

20) The second issue that falls for determination is as to whether the document, which, according to the complainant, was sought to be produced by the Administrator, Municipal Council, Anantnag, before the Arbitral Tribunal, is a forged document. Before determining this issue, we will have to understand the definition of the offence of "forgery". Section 463 of the IPC defines the "forgery" as making of a false document or part of a document with an intent to cause damage or injury to the public or any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud. Thus, making of a false document is gist of offence of forgery as defined in Section 463 of IPC.

21) Section 464 of IPC defines making a false document. It reads as under:

> ***464. Making a false document. —***
> *A person is said to make a false document or false electronic record—*
> *First — Who dishonestly or fraudulently—*
> *(a) makes, signs, seals or executes a document or part of a document;*
> *(b) makes or transmits any electronic record or part of any electronic record;*
> *(c) affixes any electronic signature on any electronic record;*
> *(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,*
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> *with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed,*

> *sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or*
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> *Secondly — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*
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> *Thirdly — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.*

22) From a plain reading of aforesaid provision, it appears that false documents have been categorized in three classes; (i) where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person or by the authority of some other person, by whom or by whose authority he knows it was not made or executed; (ii) when a person dishonestly or fraudulently by cancellation or otherwise alters a document in any material part without lawful authority after it has been made or executed either by himself or by any other person; and (iii) when a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such

person could not by reason of unsoundness of mind or intoxication or deception practised upon him, knows the contents of the document or the nature of the alteration.

23) Thus, a person can be said to have made a false document, if he makes or executes a document claiming to be some else or authorized by someone else or if he alters or tampers a document or obtains a document by practising deception or from a person not in control of his senses. Making of a false document, in view of the definition of 'forgery' is a necessary element thereof. The aforesaid position of law has been laid down by the Supreme Court in the case of **Mohammad Ibrahim & Ors. v. State of Bihar & anr.** (2009) 8 SCC 751.

24) In the light of the aforesaid position of law, let us now, on the basis of the analysis of the facts of the present case, determine as to whether any false document has been made by any person so as to attract the offence of forgery, which is gist of offences under Section 192, 468 and 471 of IPC.

25) In the present case, it has been claimed by respondent No.3 that the Administrator, Municipal Council, Anantnag, during the arbitral proceedings, produced a forged notice before the Arbitral Tribunal. If we have a look at the Case Diary relating to FIR No.133/2023, the document which has

been alleged to be a forged document by respondent No.3 is document bearing endorsement No.MC/Ang/20/2186-93 dated 26.03.2020, whereby a notice has been issued informing the petitioner and respondent No.3 to clear/clean Enso Tower properly with spreading of disinfectants in the tower within two days, failing which action as per law at their risk and cost has been contemplated.

26) During the arbitral proceedings, Chief Executive Officer, Municipal Council, Anantnag, annexed with his reply a copy of the aforesaid notice. However, when statement of Mohammad Ismail, the then Executive Officer, Municipal Council, Anantnag, was recorded before the Tribunal, he deposed that only one notice was issued which was addressed to the petitioner and the addition of name of respondent No.3 in the notice that has been produced before the Tribunal can be a clerical error. On this basis, it is being claimed by respondent No.3 that notice dated 26.03.2020, which bears his name, is a forged document.

27) I am afraid the inference drawn by respondent No.3 or by the learned Magistrate while directing registration of FIR No.133/2023 is wholly misconceived. It is nobody's case that notice dated 26.03.2020 which bears the name of respondent No.3 besides the name of the petitioner, does not bear the signatures of the person who is purported to have issued the

said notice. It is also not the case that the person who has signed the said notice did not know the contents of the document or its nature. Further it is not the case where the document in question had been obtained by the petitioner or anybody else from the Executive Officer, Municipal Council, Anantnag, by practising deception or the said officer was not in control of his senses while preparing and signing the said document. Thus, the document in question does not fall in any of the three categories of false document as defined under Section 464 of IPC.

28) It appears to be a case where the notice has been prepared by the Executive Officer, Municipal Council, Anantnag, in the name of the petitioner as well as in the name of respondent No.3 but actually the notice has been issued only to the petitioner which is clear from the statement made by witness Mohammad Isamil during arbitral proceedings. Thus, by no stretch of reasoning, it can be stated that the document dated 26.03.2020 falls in the category of false document and hence a forged document. Even if it is taken to be a case where the document dated 26.03.2020, though not forged, was produced by the Executive Officer in the arbitral proceedings with a view to make a false statement to the effect that the notice was issued to respondent No.3 as well, still

then, at worst, it can be a case of offence punishable under Section 193 of IPC.

29) Learned counsel for the petitioner has contended that even if offence under Section 193 IPC is made out against the petitioner, still then because the provisions of Section 195 of Cr. P. C are attracted to a case where false evidence has been given before the Arbitrator, the criminal proceedings against the petitioner could not have been set into motion without adhering to the procedure laid down in Section 195 read with Section 340 of the Cr. P. C. It has been further contended that an Arbitral Tribunal is constituted under Arbitration and Conciliation Act, as such, it should be deemed to be a "Court" within the meaning of Section 195 of the Cr. P. C.

30) The aforesaid contention of the petitioner is misconceived for the reason that in Section 195 of Cr. P. C, there is no mention of Arbitrator or arbitral proceedings. The said provision only refers to the "Court". In fact, the term "Court" has been defined in sub-section (3) of Section 195 of Cr. P. C to mean a civil, revenue or criminal court and it includes a Tribunal constituted by or under Central, provincial or State Act if declared by that Act to be a Court for the purposes of said provision. Thus, it is clearly laid down that a Tribunal constituted under a statute should be declared as "court" by the said statute. In the Arbitration and

Conciliation Act, the Arbitral Tribunal has not been declared as a "court". Thus, the provisions contained in Section 195 of the Cr. P. C are not attracted to an offence of giving false evidence before the Arbitral Tribunal. In support of the aforesaid view, reliance is placed upon the judgment of the Supreme Court in the case of **Manohar Lal** v. **Vinesh Anand & Ors**, (2001) 5 SCC 407, in which it has been clearly held that Arbitrator cannot be termed to a court within the meaning of Section 195 of the Cr. P. C.

31) However, there is yet another aspect of the matter which is required to be noticed. An offence defined under Section 192 of IP,C which is punishable under Section 193 of IPC, is non-cognizable in nature, therefore, no FIR could have been registered against the petitioner even if it is assumed that false evidence was produced by the Executive Officer before the Arbitral Tribunal. The learned Magistrate, while exercising powers under Section 156(3) of Cr. P. C, could not have issued a direction upon the officer incharge of the police station to register the FIR and investigate the case because the allegations made in the complaint lodged by respondent No.3, at worst disclosed commission of a non-cognizable offence and not a cognizable offence. Thus, it was beyond the competence of the jurisdictional Magistrate to direct registration of the FIR. Once the basic order, on the basis of

which impugned FIR No.133/2023 has been registered, is without jurisdiction, the said FIR could not have been registered and investigated by the official respondents. The impugned FIR including the proceedings emanating therefrom, as such, deserve to be quashed.

32) For what has been discussed hereinbefore, the petition is partly allowed and FIR No.133/2023 for offences under Section 192, 420, 468 and 471 of IPC, registered with Police Station, Anantnag and the proceedings emanating therefrom are quashed whereas the prayer with regard to quashment of FIR No.78/2020 registered with P/S, Anantnag is declined.

33) The Case Diaries be returned to learned counsel for the official respondents.

(Sanjay Dhar)
Judge

SRINAGAR
26.12.2025
"Bhat Altaf-Secy"

Whether the **Judgement** is speaking: **YES**
Whether the **Judgement** is reportable: **YES**