

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

CRA No. 3/2008

Reserved on: 26.12.2025

Pronounced on : 27.01.2026

Uploaded on: 27.01.2026

Whether the operative part or
full judgment is pronounced: "FULL"

**Gh. Rasool Ganie
S/o Gh. Mohammad Ganie
R/o Karahama District Baramulla
Through his Wife Mst. Halima
W/o Gh. Rasool Ganie
R/o Karahama District Baramulla
(Age 51 years)**

...Appellant/Petitioner

Through: - Mr. G.A. Lone, Advocate with
Mr. Mujeeb Andrabi, Advocate

v/s

**State of Jammu and Kashmir through S.S.P.,
Vigilance Organization, Kashmir, Srinagar**

...Respondent(s)

Through:- Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

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

J U D G M E N T

1. This appeal is directed against the judgment of conviction and order of sentence dated 08.02.2008 passed by the Court of the Special Judge (Anti-Corruption), Srinagar (hereinafter referred to as "*the Trial Court*") in case titled *State v. Gh. Rasool Ganie*, File No. 1/B of 01.05.2002, whereby the appellant was convicted for the offence punishable under Section 5(2) of the Jammu and Kashmir Prevention of Corruption Act, 2006, and sentenced to undergo rigorous imprisonment for three years with a fine of ₹20,000/-. He was further convicted for the offence under Section 468 RPC and sentenced

to rigorous imprisonment for three years with a fine of ₹20,000/-, and for the offence under Section 471 RPC to undergo rigorous imprisonment for two years, besides a direction for recovery of pecuniary advantage of ₹2,19,757/- from him.

2. The impugned judgment is assailed, inter alia, on the ground that the Trial Court has erred in law and on facts by failing to appreciate the evidence in its proper perspective. The findings recorded are contrary to the material on record and are based on misapplication of law. The evidence led by the prosecution is shaky, unreliable, and insufficient to sustain conviction. The appellant's promotion was effected by a duly constituted Selection Committee, and admittedly none of the members of the said Committee were examined as witnesses, though they alone could have deposed regarding the genuineness and legality of the selection process. The prosecution case further suffers from serious defects as the alleged forged documents were neither recovered nor was any evidence to establish that the appellant had prepared or caused preparation of such documents or had used the same to obtain undue benefit. During trial, none of the witnesses deposed that the appellant abused his official position to secure the promotions in question.
3. Briefly stated, the prosecution case is that the appellant, a public servant employed at Sher-i-Kashmir Institute of Medical Sciences (SKIMS), Soura, Srinagar, abused his official position and illegally secured two promotions by producing a fake matriculation certificate and by tampering with his Army Discharge Certificate to falsely show his rank as Naik instead of Rifleman in JAKLI. On the basis of a preliminary enquiry, **FIR No. 80/1999** was

registered at Police Station VOK for offences under Section 5(2) P.C. Act read with Sections 468 and 471 RPC.

4. The appellant was initially appointed as a Security Attendant in SKIMS in the year 1983 after having served as an Ex-Rifleman in JAKLI. He was promoted as Security Monitor vide order dated 22.08.1991, and thereafter as Security Supervisor Grade-II on 12.02.1998. The investigation revealed that in the year 1991, the appellant allegedly produced a tampered Army Discharge Certificate showing himself as Naik instead of Rifleman, thereby securing promotion by deceitful means. It was further alleged that in the year 1998, he produced a fake matriculation certificate dated 31.10.1992, bearing Roll No. 829298 (Session Oct–Nov 1991), purportedly issued by the Chairman, J&K Board of School Education (BOSE). Both documents were alleged to be forged. On the basis thereof, the prosecution alleged that the appellant secured undue promotions and drew excess emoluments amounting to ₹2,19,757/- during the period 02.08.1991 to 30.09.2000. After investigation, the appellant was challaned before the Trial Court, where he pleaded not guilty.
5. During trial, the prosecution examined sixteen witnesses, including PW-1 Mohammad Shafi Qadri, PW-16 Nazir Ahmad Shah. After closure of prosecution evidence, the appellant was examined under Section 342 Cr.P.C., wherein he categorically stated that he had never appeared in the matriculation examination and, therefore, the question of producing any fake matriculation certificate did not arise. He further asserted that his promotions were granted on the basis of seniority and good conduct. The appellant also

examined two defence witnesses, namely DW-Gull Mohammad Bhat and DW-Aftab Ahmad Bhat, in support of his defence.

6. The Trial Court held that prior to joining SKIMS, the appellant had served in JAKLI as a Rifleman, did not possess a matriculation certificate, and was appointed as Security Attendant on 23.09.1983. It was further held that the qualification prescribed for promotion to the post of Security Monitor was Naik or matriculation, and for Security Supervisor Grade-II, matriculation or JCO rank in the Army was required. Relying upon the testimonies of PW-9 Manzoor Ahmad Shah, PW-10 Sardar Karanjeet Singh, PW-14 Munshi Bashir Ahmad, PW-15 Gh. Hassan, and PW-16 Nazir Ahmad Shah, the Trial Court concluded that the appellant had produced a fake matriculation certificate, got its photocopy attested, and retained the original with himself. The certificate, upon verification from BOSE, was found to be invalid and not tallying with official records. The Trial Court further observed that the appellant failed to explain the interpolation in his Army Discharge Certificate, wherein “Naik” appeared in place of “Rifleman”. On these findings, the Trial Court concluded that the appellant had forged and used false documents to secure promotions and had drawn illegal pecuniary benefit. He was accordingly convicted.

7. Learned counsel for the appellant, while assailing the judgment, relied upon **AIR 2025 SC 4193**, and contended that there is no evidence whatsoever to establish that the appellant himself indulged in any overwriting or interpolation of the Army Discharge Certificate. It was submitted that in his initial application for appointment, the appellant had clearly mentioned that

he retired as a Rifleman and possessed qualification of **9th pass**, thereby demolishing the prosecution case. The alleged fake matriculation certificate (ExPW-NA/1) pertains to Jan Mohammad S/o Gh. Mohammad R/o Peerbagh and bears no nexus with the appellant. It was argued that had the appellant intended to project himself as a matriculate, he would have procured a certificate in his own name and not in the name of a third person. It was further contended that the promotion was approved by a duly constituted **Selection Committee** in its meetings dated 31.07.1998 and 07.08.1998, after scrutiny of records, and none of the Committee members were examined. The Investigating Officer admitted that no original forged documents were seized and the case rests entirely on photocopies, which lack evidentiary value. There is no evidence that the originals were destroyed or suppressed by the appellant. Hence, the conviction is based on conjectures and suspicion, which cannot substitute legal proof.

8. Per contra, learned counsel for the respondent supported the impugned judgment, contending that the Trial Court has meticulously appreciated the evidence on record. It was argued that the attestation of the photocopy of the fake matriculation certificate by PW-9 at the instance of the appellant is duly proved and stands corroborated by the BOSE officials. The appellant, having produced forged documents, secured promotions and derived pecuniary advantage by misusing his official position, and therefore, the conviction warrants no interference.
9. This Court has given its anxious consideration to the submissions advanced at the Bar and has minutely examined the entire trial court record. In **AIR 2025 SC 4913**, the appellant therein was a student of Nagpur University and

was alleged to have altered her marks in two mark-sheets in order to secure admission to a higher class. Though she denied the allegation of forgery, she was convicted by the trial court. While setting aside the conviction, the Hon'ble Supreme Court observed that where authorship of the alleged forgery is central to the prosecution case, the burden lies heavily upon the prosecution to establish, by direct or cogent circumstantial evidence, that the accused herself had made or caused the alteration. The Court further held that non-examination of a handwriting expert or absence of corroborative evidence proving authorship fatally weakens the prosecution case.

10. The Apex Court further observed that even if the prosecution version that the tampered document was used to secure admission is assumed to be correct, mens rea still must be independently established. Where the document has passed through administrative scrutiny and was stamped or accepted by competent authorities, absence of proof of dishonest intention or knowledge of falsity renders the prosecution case incomplete. In such circumstances, the mental element remains unproven. The Supreme Court laid down the following principles:

“14. The settled principles are well known:

- (i) Benefit of doubt must follow where two views are reasonably possible;*
- (ii) Suspicion, however grave, cannot substitute proof; and*
- (iii) Where direct evidence is absent, exclusive control over the forged document must be proved, particularly when the document has passed through several hands before detection. In the absence thereof, the evidence may raise suspicion but does not establish guilt beyond reasonable doubt.”*

11. In light of the aforesaid legal position, the prosecution evidence in the present case requires careful scrutiny. PW-1 Mohammad Shafi Qadri and PW-2 Rafiq Ahmad Dar are witnesses only to the production and seizure of record, which position is similarly echoed by PW-3 Mohammad Aslam Jan. PW-4 Deeraj Singh, a retired Security Attendant senior to the appellant, stated that the appellant was promoted on the basis of some documents, but candidly admitted that he had never seen those documents. PW-5 Mohammad Syeed Shah deposed that the Vigilance Organisation had requisitioned the appellant's personal file and stated that the appellant was President of the Employees Union, though he was not associated with any departmental enquiry.

12. PW-7 Gh. Hassan Naikoo spoke only about preparation of due and drawn statements. PW-8 Mohammad Amin Zarger stated that he did not know the basis on which the appellant was promoted and conjectured that it may have been due to matriculation. He confirmed seizure of service records and admitted that a departmental enquiry initiated against the appellant was not taken to its logical conclusion owing to registration of the criminal case.

13. PW-9 Manzoor Ahmad Shah stated that he had attested a photocopy of a matriculation certificate produced by the appellant in a routine manner and that the original was returned to the appellant. He later came to know that the certificate was fake. PW-10 Sardar Karanjeet Singh stated that the appellant was promoted as Security Monitor for being a Naik in the Army, though he did not know the appellant's actual rank and admitted in cross-examination that he was not concerned with the promotion process.

14. PW-14 Munshi Bashir Ahmad, Inspector VOK, stated that the matriculation certificate did not tally with BOSE records and that Army authorities informed him that the appellant was only a Rifleman. He, however, admitted that the complaint emanated from employees of the Security Wing and that only photocopies were obtained. PW-15 Gh. Hassan admitted that despite written requests, originals were never supplied and only photocopies were provided. PW-16 Nazir Ahmad Shah confirmed that Roll No. 829298 pertained to one Jan Mohammad S/o Gh. Mohammad, who had failed in the examination. This, in substance, is the prosecution evidence.

15. From the trial court record, it is evident that pay details and minutes of the Junior Selection Committee meetings dated **31.07.1998** and **07.08.1998** were seized and proved. There is no dispute regarding seizure of records. The minutes clearly show that the appellant's case was evaluated on its own merits and nowhere records that he was ineligible for promotion. PW-4 Deeraj Singh was dropped for not fulfilling eligibility criteria, whereas the appellant was recommended.

16. The recruitment criteria provided for promotion to Security Supervisor Grade-II contemplated promotion from Security Monitors possessing matriculation qualification or holding the rank of Junior Commissioned Officer. While the appellant was recorded as Code No. 1340 and PW-4 as Code No. 305, the Committee nevertheless promoted the appellant. The answer to whether the appellant produced forged documents lies in his initial application for appointment, which clearly disclosed his rank as Rifleman

and qualification as 9th standard. There is no evidence of interpolation therein.

17. Exhibit NA/1, the alleged fake matriculation certificate, is admittedly only a photocopy. The prosecution has not recovered any original certificate from the appellant, nor has it been alleged that the appellant destroyed or concealed the original. Significantly, the certificate pertains to one Jan Mohammad, not the appellant. Even if such a certificate were produced, it could not have conferred any benefit upon the appellant unless the Selection Committee ignored the mismatch of identity. The Investigating Officer fairly admitted that the case originated from a complaint by security staff alleging false claims by the appellant.

18. Once the Selection Committee scrutinised and approved the appellant's promotion, it becomes evident that the appellant could not have single-handedly secured promotion unless supported by institutional processes. The alleged interpolation in the discharge certificate was never proved by production of the original or by expert evidence. The Army authorities did not attribute the interpolation to the appellant. In absence of direct evidence, the Trial Court erred in presuming authorship.

19. The appellant, in his statement under Section 342 Cr.P.C., consistently maintained that he retired as a Rifleman and did not possess matriculation qualification. The prosecution failed to examine members of the Selection Committee who were the most material witnesses.

20. Section 470 RPC defines a forged document as a false document made by forgery, while Section 464 RPC defines what constitutes a false document.

21. Unless a document satisfies the ingredients of Sections 464 and 470, the offence under Section 471 cannot be attracted. In *Mohd. Ibrahim v. State of Bihar*, (2009) 8 SCC 751, the Supreme Court authoritatively explained that unless impersonation, unauthorised alteration, or fraudulent procurement is proved, execution of a document does not amount to forgery. Mere dishonest claim does not constitute a false document, it was held as under,

“14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

- 1. The first is 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 or some other person, by whom or by whose authority he knows it was not made or executed.*
- 2. The second is where 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 by either himself or any other person.*
- 3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or nature of the alteration.*

In Short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

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17. *When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”*

22. Applying the principles laid down in AIR 2025 SC 4193 and Mohd. Ibrahim (supra), the alleged fake matriculation certificate (Ex. NA/1) was never produced in original, was not seized from the appellant, did not relate to him, and its authorship was never proved. No expert evidence was led. Similarly, the alleged interpolation in the discharge certificate was not shown to have been done by the appellant. In absence of proof of authorship, exclusive control, or mens rea, the prosecution case falls short of the standard of proof required in criminal law.

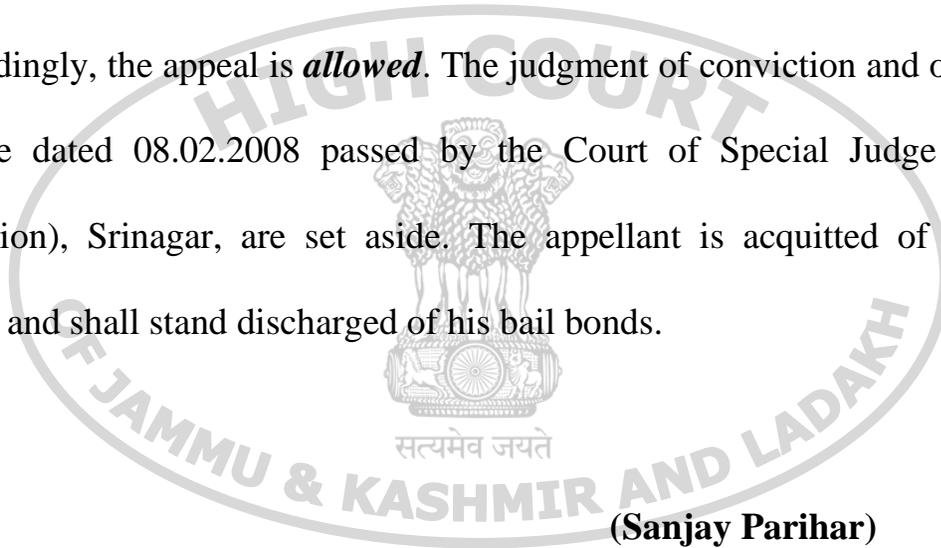
23. The Trial Court convicted the appellant on conjectures and shifted the burden upon him to prove his innocence, which is impermissible. The appellant consistently disclosed his true rank and qualification. His promotions, though irregular, could not be attributed solely to deceit on his part without cogent evidence. The criminal case was initiated only after his promotion in 1998, following internal discontent. In such circumstances, the prosecution failed to prove:

- preparation or alteration of documents by the appellant,

- exclusive possession or control over forged documents,
- knowledge of falsity, or
- dishonest intention.

24. On the aforesaid basis, the finding of conviction and sentence recorded against the appellant is not only perverse but also unsustainable in law, as the appellant could not have been convicted on mere suspicion, howsoever grave, which can never take the place of legal proof. The prosecution has failed to establish the guilt of the appellant beyond reasonable doubt. The conviction rests on conjectures, assumptions, and incomplete evidence. The essential ingredients of the offences punishable under Sections 5(2) of the Prevention of Corruption Act, 468 and 471 RPC have not been proved.

25. Accordingly, the appeal is **allowed**. The judgment of conviction and order of sentence dated 08.02.2008 passed by the Court of Special Judge (Anti-Corruption), Srinagar, are set aside. The appellant is acquitted of all the charges and shall stand discharged of his bail bonds.



(Sanjay Parihar)
Judge

JAMMU
27.01.2026
Akshil Dev

Whether the order is speaking? : Yes

Whether the order is reportable? : Yes