

Serial No. 1
Regular Cause List

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

Cr1A(D) 45/2024
CrIM 977/2024

Union Territory of J&K through SHO Police
Station Srigufwara, Anantnag

...Appellant(s)

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

Vs.

Gh. Mohammad Lone

S/O Mohammad Abdullah Lone

R/O: Khushroi Kalan, Srigufwara,
Anantnag

...Respondent(s)

Through: Mr. Zahid Hussain Dar, Advocate with
Mr. Zahid Afzal, Advocate

CORAM:

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

ORDER

31.07.2025

Per: Sanjeev Kumar-J : (Oral)

01. This appeal by the Union Territory of Jammu & Kashmir is directed against the judgment of acquittal dated 20th February, 2024, passed by the Court of Special Judge Designated Under NIA Act, Anantnag [“the trial Court”], in File No. 44/TADA titled “**Union Territory of J&K through P/S Srigufwara Vs. Gh. Mohammad Lone**”

02. Briefly put, the prosecution case as presented before the trial Court is that, on the basis of information received from a reliable source, Police Station Srigufwara, on 8th September, 2012, registered FIR No. 59/2012 for offences under Section 13 of the Unlawful Activities (Prevention), Act, 1967, [for short “UA(P) Act”]. The information which became the basis of registration of FIR was that the proscribed organization Hizbul Mujahideen had affixed some posters on electric poles threatening the elected Panchs/Sarpanchs to resign or face dire consequences.

03. On the basis of suspicion, five persons including the respondent were rounded up by the Police for interrogation. Their specimen handwriting was taken and, on comparison with the handwriting on the offending posters, the Police concluded that the affixing of the offending posters on the electric poles was handiwork of respondent. Accordingly, the Investigating Officer sent the specimen handwriting of the respondent taken in the presence of the Executive Magistrate to the FSL for comparison with the handwriting on the offending posters.

04. The statements of witnesses under Section 161 Cr.P.C were recorded. After obtaining the opinion from the FSL and having regard to the evidence recorded under Section 161 Cr.P.C, the challan was presented before the trial Court. Vide order dated 19th June, 2018, charge under Section 13

UA(P) Act was framed against the respondent. The respondent denied the charge and claimed to be tried. In order to prove its case, the prosecution examined PW-1 Bashir Ahmad Rather, PW-2 Ab. Rashid Rather, PW-3 Mohd Shaban Nengroo, PW-4 Asadullah Lone, PW-5 Sajad Ahmad Wani (Executive Magistrate), PW-6 Altaf Ahmad (FSL Srinagar), PW-7 Inspector Shameem Ahmad, PW-8 ASI Nisar Ahmad and PW-9 Inspector Gh. Hassan Lone. After the conclusion of prosecution evidence, the statement under Section 342 Cr.P.C was dispensed with, and the matter was heard finally.

05. The trial Court, having heard the prosecution and the defense, and having regard to the evidence that had come on the record, came to the conclusion that the prosecution had miserably failed to connect the respondent with the commission of offence with which he was charged. According, vide judgment impugned the respondent was acquitted of the charge. It is this judgment of acquittal which is called in question by the Union Territory of Jammu & Kashmir before us.

06. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the evidence on record does not support the charge. PW-1, PW-2 and PW-3 have not supported the prosecution case and were declared hostile on the request of

prosecution. During cross-examination, no incriminating material has been elicited from the aforesaid witnesses. The statement of PW-4 Asadullah Lone, who is a witness to the seizure of the offending posters, also does not advance the case of prosecution in any manner. He has even denied having made any statement under Section 161 Cr.P.C. Faced with the aforesaid position, the prosecution also prayed for declaring the aforesaid witness as hostile, which was allowed by the trial Court.

07. The statement of PW-5, an Executive Magistrate, is only to the extent of witnessing the taking of specimen handwriting of the respondent and is not a witness to prove that the posters were actually written and pasted by the respondent on the electric poles. Similarly PW-6 Altaf Ahmad, an expert from the FSL, submitted report bearing No. FSL/152-Doc/Sgr dated 30.09.2013. As per his statement, he found similarity between the specimen handwriting and the handwriting found on the posters. That is the only incriminating material that has come on record. The rest of the prosecution witnesses are the Investigating Officers, who investigated the matter from time to time.

08. In view of the aforesaid discussion, it is abundantly clear that the offence with which the respondent was charged by the trial Court has not been proved by any cogent evidence. Other than the statement of PW-6 Altaf

Ahmad, that the specimen writing taken by the police in the presence of Executive Magistrate is similar to the writing on the offending posters, there is no material connecting the respondent with the preparation and affixing of the offending posters on the electric poles in the town.

09. Apart from the nature of allegations against the respondent and the material collected by the Investigating Officer during the investigation, the ingredients of Section 13 are not made out. For facility of reference Section 13 of the UA(P) Act is set out below:-

13. Punishment for unlawful activities.—

(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section

(3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations there for carried on by

any person authorised in this behalf by the Government of India.

10. From reading of Section 13, it clearly comes out that offence under Section 13 of the UA(P) Act is made out against a person who takes part in, or commits; or advocates, abets, advises or incites the commission of, any unlawful activity. The term “unlawful activity” is defined in Section 2(o) of the UA(P) Act, which for facility of reference is set out below:

2(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;

11. From plain reading of the above it is evident that, for an act to be termed as “unlawful activity”, it must be one which is intended or supports any claim to bring about the cession

of a part of the territory of India or the secession of a part of territory of India from the Union or which incites any individual or group of individuals to bring about such cession or secession. The act or action may also fall within the term “unlawful activity” as if it disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India or which causes or is intended to cause disaffection against India.

12. The writings on the offending posters were only aimed at and intended to intimidate elected Panchs by extending them a threat that in case they do not resign from their positions they would be done away with. Such words in writing cannot be said to be intended to bring about cession or session of part of the territory of India from the Union nor does it disclaim, question, disrupt or is intended to disrupt any sovereignty and territorial integrity of India. These words can also be not understood to cause or intended to cause disaffection against India. Going by the plain definition of the term “unlawful activities” the act attributed to the respondent does not fall within the purview of the term of “unlawful activity” under Section 2(o) of the Act.

13. The ingredients of Section 13 of the UA(P) Act were thus not made out. In the instance case, the trial Court should have discharged the respondent of the charge and instead framed an appropriate charge under the Ranbir Penal Code

(RPC). We could have remanded the matter back to the trial Court for framing such a charge, but having regard to the fact that respondent has already faced the ordeal of trial for more than eight years and, therefore it would not be appropriate to do so.

14. For the foregoing reasons, we do not find any merit in this appeal and the same is, accordingly, **dismissed**.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

31 .07.2025

"Mir Arif"

- (i) Whether the order is reportable? Yes.
- (ii) Whether the order is speaking? Yes.