

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

Reserved on: 27.07.2026

Pronounced on: 07.08.2026

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*Whether the operative part or full
judgment is pronounced: **Full***

CRM(M) No.430/2022

c/w

CRM(M) No.285/2021

GHULAM RASOOL RATHER

GH. MOHAMMAD RATHER & ORS. ...PETITIONERS/APPELLANT(S)

Through: - Ms. Asma Rashid, Advocate (in CRM(M) No.430/2022)
Mr. Shakir Haqani, Advocate (in CRM(M) No.285/2021)

Vs.

UT OF J&K & ANR.

...RESPONDENT(S)

Through: - Mr. Younis Hafeez, Assisting Counsel.

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

JUDGMENT

1) By this common judgement, afore-titled two petitions, one bearing CRM(M) No.430/2022 filed by Ghulam Rasool Rather, and other bearing CRM(M) No.285/2021 filed by Ghulam Mohammad Rather and others, are proposed to be disposed of. Vide both these petitions, the petitioners have thrown challenge to FIR No.252/2021 for offences under Section 420, 354 and 120-B of IPC registered with Police Station, Budgam.

2) As per the allegations made in the impugned FIR, on 12.08.2021, respondent No.2-Gazala Gulzar, lodged a written

report with the police, the contents whereof are reproduced as under:

“I have acquired vision Public School from the management of International Islamic School Milatabad Humhama from its six members viz Gh. Mohammad Rather S/o Abdul Salam Rather, Showkat Hussain Mirza S/o Haji Hassan Mirza, Gh. Nabi Var S/o Abdul Gaffar Var, Altaf Hussain Bhat S/o Kh. Gulla Bhat, Manzoor Ahmad Matoo S/o Bashir Ahmad Matoo, Tariq Ahmad Bhat S/o Gh. Hassan Bhat in the year Nov, 12. This group has looted all my wealth by passing a school that has many faults and complexities with it. From the day first of my taking over the new School, it was very hard for me to understand their ill designs. They introduced themselves as office bearers of IRF Educational

Trust of Mumbai and told us that they have dedicated themselves to the service of non-profit Islamic education under Zakir Naik.

I have been passed the School with a guarantee that the school has a bright future and there shall be no issue at all and they entrapped me and used me to fulfil their broken commitments to the people who got their kids enrolled in Vision Public School under their management.

On the first day of taking over Ghulam Mohmad Rather one of the partners of International Islamic School came to vision public school and threw me out of the premises claimed to be the real owner of the school building. It later came to my knowledge that he bring their partner in both of their schools had not been paid the share of the exact amount they have received from us.

As per our deal, it was 30,000/ PM rent which was payable to Ghulam Mohammad Rather (landlord) and this group inflated the revenue and number of students enrolled with them. The Rent was for 35000 PM but, they were getting a deduction of Rs. 5000/- from him every month which can also be verified from the Bank account. The trio being prony Gh. Rasool Rather, Abdul Rashid Rather and Irshad Ahmad Rather are all involved.

Mr. Ghulam Mohammad Rather insisted us to pay him Rs. 10,00,000 as good- will exclusively in addition to what has been paid to International Islamic School and other partners so he may allow us to enter the building against the rent in vogue of Rs. 30,000/ PM. I borrowed and paid Ghulam Mohammad Rather Rs. 4,00000 which he took half

in his name and other half to his younger brother to evade tax issues (through cheque) remaining 60,0000 Rs has paid (through cheques) through monthly rent viz, 30,000+30,000 for the period of twenty months.

In Nov-13 we received the first flash flood and 12 inches of water inside the school (photos enclosed). The flash flood system continued every year and was kept hidden from me. The hiding information has caused financial loses and traumatised me besides made students and staff suffer. Struggling with the flash floods on one side the other lid went off and smashed me with one big blow. In May 2014 the crime branch, Kashmir, raised VPS and investigated the admission of Imam Soban who happened to be the foster son of congress leader this was another scam which has been kept hidden from us.

On my continuous requests for making the school habitable, as students were suffering and we also were making loses because of the non fulfillment of his commitments.

In April 2017 on a fine day (Mr Ghulam Rasool Rather) all of sudden agreed to repair the building and asked me for some hardware items which according to him he has placed somewhere in the main building to make few things good. Later it came as a nightmare as it was a very shameful and disturbing act from his side. He made a shameful assault there. The matter was taken up there and then with Mr Kuchay and he immediately called Mr. Dar. There were four people present then and I handed over the keys of the school to them and asked to take this school management back as the price asked for making the school good is beyond our moral capacity. The whole of the scene was pronounced before Mr. Kuchay. Such a criminal act committed by an elderly person was shocking and inflicted terror besides shame. His gestures and acts intended to insult the modesty of woman were very disturbing. He has indulged in stalking too which was not taken seriously initially due to his age. The matter took a serious turn when Mr Kuchay and Dar intervened and virtually begged not to report the matter to the police and in return they banned Gh. Rasool Rather entry to school when the female staff present during school time.

I have invested more than Rs. 80,00,000 (80 lakhs) in principle, most of which has been paid to the partners of IIS besides my 8 years of tedious service to the education sector. Further, I am indebted to the financial institutions to the tune of more than Rs. 20,00,000. I have a loan from my erstwhile partners on me as well. Our landlords and partners of IIS express their concern for the students

enrolled with us who were all their before. They have taken a big pie from us and are now expecting that we will vanish in thin air and all their previous records and liabilities will get eroded and they will gobble all our investment. My two school vehicles which were bought to ferry VPS students are still in their captivity.

Now that Ghulam Rasool Rather has also unilaterally defied the ban imposed on him (after his assault) not to enter the school and I believe it will not be so safe for any woman to work over there under such circumstances. Despite being courageous, I firmly believe that those cunning in this group will inflict pain and suffering on me and will try to harm me and the school. In this situation and keeping the nuisance of these nine people in consideration, I am making a humble request to the Station House Officer, Humhama, to lodge an FIR against them. Rule of law is prevailed. The previous application regarding registering of FIR should also please be taken in consideration for material facts.”

3) On the basis of the aforesaid written complaint of respondent No.2/complainant, the impugned FIR came to be registered by the police and investigation was set into motion. A perusal of the Case Diary produced by the investigating agency reveals that during the course of investigation, statements of some of the witnesses have been recorded in terms of Section 161 of the Cr. P. C and the statement of the complainant under Section 164 of the Cr. P. C has also been recorded. The investigating agency has also seized the copies of rent deeds executed between the petitioners and the complainant as also other documents relevant to the case.

4) The petitioners, while laying challenge to the impugned FIR, have narrated that on 2nd September, 2011, petitioners Showkat Hussain Mirza, Ghulam Nabi War, Altaf Hussain

Bhat, Mansoor Ahmad Mattoo and Tariq Ahmad Bhat had set

up a trust known as “Vision Educational Trust” out of their personal donations and subsequently petitioner Ghulam Mohammad Rather was also included as a trustee. The Trust was operating a school, namely, “Vision Public School” from a rented premises belonging to petitioner Ghulam Rasool Rather. Later on, the school was transferred by the petitioners of CRM(M) No.285/2021 to respondent No.2/complainant in the year 2012 along with its assets, registrations and goodwill and since then the school is being operated by the said respondent exclusively.

5) It has been submitted that after taking over the school, respondent No.2 entered into a series of rent agreements with petitioner Ghulam Rasool Rather on 02.01.2013 and thereafter on 27.04.2018. It has been further submitted that at the behest of the land lord, namely, petitioner Ghulam Rasool Rather, Deputy Commissioner, Budgam, directed the concerned Executive Engineer of R&B to visit the said site and assess the condition of the school building. Vide communication dated 04.06.2021, the Executive Engineer reported that the school building is not fit for education purposes. Pursuant thereto, Chief Education Officer, Budgam, vide his communication dated 16.06.2021 impressed upon respondent No.2 to make some alternative

arrangement keeping in view the unsafe status of the school building.

6) According to the petitioner/landlord, Ghulam Rasool Rather, a legal notice was served upon respondent No.2/complainant for clearing the outstanding rent amount of Rs.93.00 lakhs pending upto 01.07.2020 and when the said respondent failed to clear the outstanding amount, the petitioner/landlord filed a suit for recovery of arrears of rent amount of Rs.10,02,000/ against respondent No.2.

7) It is the contention of the petitioners that respondent No.2/complainant, in order to harass them and to avoid payment of rentals of the school building, has filed a false report before the police which has culminated in registration of the impugned FIR. It has been contended that the contents of the impugned FIR do not disclose commission of any cognizable offence against the petitioners. According to the petitioners, the dispute between them and respondent No.2 is purely of civil nature and that the same cannot be permitted to be converted into a criminal prosecution. It has also been contended that the allegations made in the impugned FIR are based upon vengeance and it is being used by respondent No.2 as an instrument of oppression against the petitioners.

8) The respondent-State has filed its objections to both the petitions. In the objections the contents of the impugned FIR

have been narrated and it has been submitted that two vehicles bearing registration Nos.JK01K-9804 and JK01K-9805, which are registered in the name of the Vision Public School, are presently in possession of the petitioners/accused. It has been found that that the petitioners/accused had managed a false admission to one student, namely, Imam Soban, foster son of ex-education minister and in this regard FIR No.1/2014 stands registered with Police Station, Crime Branch, Srinagar. It has also been submitted that as per the statement of the complainant, her modesty was outraged by petitioner Ghulam Rasool Rather who put his hands upon the chest of the complainant. It is the case of the prosecution that investigation has established commission of offences under Section 420, 120-B of IPC on the part of the accused persons.

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

10) As per the prosecution case, the accused/petitioners are stated to have committed the offences under Section 420 and 120-B of IPC. Section 420 of IPC prescribes the punishment for the offence of cheating. Cheating has been defined in Section 415 of IPC. To constitute an offence under Section 420 of IPC, there must be a fraudulent or dishonest inducement on the part of a person and thereby the other party must have parted with his property. To establish an

offence under Section 420 of IPC, it must be shown that there was a fraudulent and dishonest intention at the time of commission of the offence and that the person practicing deceit had obtained the property by fraudulent inducement and wilful representation. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction i.e. at the time when the offence is alleged to have been committed.

11) The Supreme Court has, in the case of **Hridaya Ranjan Prasad Verma v. State of Bihar and another**, (2000) 4 SCC 168, observed that it is the intention which is the gist of the offence and in order to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise.

12) Again, in **Alpic Finance Ltd vs P. Sadasivan and Anr.**, (2001) 3 SCC 513, the Supreme Court has held that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception. Thus, it is necessary to show that a person had fraudulent or dishonest intention at the

time of making of promise, to say that he committed an act of cheating.

13) “Dishonestly” has been defined in Section 24 of the IPC to mean deliberate intention to cause wrongful gain or wrongful loss and when, with such intention, deception is practised and delivery of property is induced, then the offence under Section 420 of IPC can be said to have been committed.

14) In the light of the aforesaid legal position, let us now analyze the contents of the impugned FIR. A perusal of the contents of the impugned FIR indicates that respondent No.2 has, primarily, raised the following allegations:

- (1) That the trustees/accused of the Vision Public School have duped her by transferring the school with a guarantee that the school has a bright future which guarantee turned out to be false.
- (2) That in the flash floods of November, 2013, rain water entered the school upto 12 inches which caused financial loss to the assets of the school that was being run by respondent No.2.
- (3) That the petitioners have managed fictitious admission of a person who happened to be the son of ex-education minister and on account of this episode, the school was raided by the sleuths of Crime Branch.
- (4) That petitioner Ghulam Rasool Rather, the landlord, has failed effect repairs in the school building and

instead he has outrated the modesty of respondent No.2.

15) I am afraid none of the aforesaid allegations qualify to be the acts of deception on the part of the petitioners. Merely because water of flash floods entered the school building and it caused damage to the school building does not make out a case of cheating of the petitioners who had handed over the school building to respondent No.2 for operating the school. The petitioners/trustees only happen to be the managers of the school and they had transferred the management of the school along with its good will to respondent No.2. They had nothing to do with the quality of the school building nor they were responsible for flash floods which was an act of God. Similarly, just because admission of one of the students became a subject matter of investigation by the Crime Branch does not lead to the inference that the trustees who had transferred the school to respondent No.2, had any intention to cheat the said respondent.

16) So far as repairs of the school building are concerned, the landlord petitioner Ghulam Rasool Rather as per the material on record had already sought permission to effect repairs of the school building and there is material on record to show that Chief Education Officer, Budgam, has issued a notice dated 16.02.2021 to respondent No.2 asking her to

make alternate arrangements for further schooling of the enrolled children keeping in view unsafe status of the school building. It appears that it is only because respondent No.2 has not vacated the school building that the repairs to the said building could not be effected. Therefore, she cannot blame any of the petitioners for non-renovation of the school building. In any case, the said reason cannot form a ground for constituting an offence of cheating against the petitioners.

17) The real reason for launching of present prosecution against the petitioners, as is brought forth from the perusal of documents on record, is somewhat different. It appears that there is a dispute between respondent No.2 and the landlord, petitioner Ghulam Rasool Rather, with regard to payment of rentals. As per rent deed dated 2nd January, 2013, respondent No.2 had to pay monthly rent of Rs.30,000/ to petitioner Ghulam Rasool Rather. Another rent deed came to be executed on 27th April, 2018 and as per the covenants of this rent deed, the rate of rent was enhanced to Rs.66000/ per month with effect from 01.12.2016 and in the said rent deed, there is a covenant with regard to future enhancement of the rent as well. There is also material on record to show that petitioner Ghulam Rasool Rather has filed a suit for recovery of Rs.10,02000/ against respondent No.2 on account of outstanding rental charges before the Court of

learned Principal District Judge, Budgam. There is material on record to show that respondent No.2 has filed a suit for declaration and injunction against petitioner Ghulam Rasool Rather before the Civil Court seeking a decree of declaration that rent deed dated 1st August, 2017, is null and void. She has also sought an injunction against her dispossession from the demised premises.

18) From the aforesaid material on record, it appears that there is a dispute between respondent No.2 and petitioner Ghulam Rasool Rather as regards the payment of rent in respect of the building from which the school is being operated. It is because of this civil litigation between the parties that respondent No.2, in order to pressurise the petitioners to enter into a compromise favourable to her, that she has resorted to filing of impugned FIR, the contents whereof, as already stated, do not disclose commission of offence of cheating.

19) It does, however, appear that there are allegations in the impugned FIR as also the statement made by respondent No.2 under Section 164 of the Cr. P. C that her modesty was outraged by petitioner Ghulam Rasool Rather. If we have a look at the Case Diary, the alleged incident is stated to have taken place in the 1st week of April, 2017, when petitioner

Ghulam Rasool Rather is alleged to have entered the school

building and thereafter caught hold of respondent No.2 from behind and pressed her chest. Respondent No.2 has not narrated the said incident to anybody else and she did not even lodge a report in this regard with the police until on 12.08.2021, after a lapse of more than four years, she included the alleged incident into the complaint which has resulted in registration of the impugned FIR. No explanation has been tendered by respondent No.2 for not narrating this incident to police during all these years. Not even in the statement made by respondent No.2 under Section 164 of the Cr. P. C, she has explained the circumstances which prevented her from narrating this incident to the police.

20) Having regard to the background of the dispute between the petitioners and respondent No.2, which has been noticed hereinbefore, it becomes clear that the aforesaid allegations relating to outraging of her modesty have been made by respondent No.2 against petitioner Ghulam Rasool Rather only to wreak vengeance upon him by setting the criminal proceedings into motion. In the peculiar facts and circumstances of this case as noticed hereinbefore, the allegation relating to outraging of modesty of respondent No.2 incorporated in the impugned FIR is nothing but an attempt on her part to harass petitioner Ghulam Rasool Rather with a view to spite him due to private and personal grudge.

21) From the foregoing analysis of the factual position which has come forth from the record and the Case Diary, it is clear that respondent No.2 has launched the impugned prosecution against the petitioners with a view to settle a civil dispute which is pending between her and petitioner Ghulam Rasool Rather in two different suits.

22) The Supreme Court has, in the case of **M/S Indian Oil Corporation vs. M/S NEPC India Ltd. & Ors.** (2006) 6 SCC 736, while deprecating the tendency of business circles to convert civil disputes in criminal cases, observed as under:

“(13) While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/ families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

23) Again, the Supreme Court has, in the case of **Mitesh Kumar J. Shah vs. The State of Karnataka & Ors.** 2021 SCC Online SC 976, expressed its disapproval for imparting criminal colour to a civil dispute merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. The Court further went on to observe that such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.

24) In view of the foregoing discussion, it is a fit case where this Court should exercise its power under Section 482 of the Cr. P. C to prevent the abuse of process of law and to secure the ends of justice.

25) Accordingly, both the petitions are allowed and the impugned FIR and the proceedings emanating therefrom are quashed.

26) The Case Diary be returned to learned counsel for the official respondents.

(Sanjay Dhar)
Judge

SRINAGAR

07.08.2026

"Bhat Altaf-Secretary"

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

