

**THE COURT OF JUDICIAL MAGISTRATE 1ST CLASS
AT CHADOORA**

CNR No. JKBG040001632018
FILE No. 04/A

Date of Institution: May 14, 2018
Date of decision: January 29, 2026

State (UT) of J&K
Through Station House Officer, P/S CIK, Srinagar
In FIR No 22/2012
U/s 2/3 E&IMCO Act, 14 Foreign Act

Versus

1. Mohammad Maqbool Rather alias Ajmal Shahzad
S/o Abdul Gani Ratherp
R/o Kralpora, Chadoora, Budgam
2. Parveena Akhtar
D/o Lal Din
R/o Bora colony, Mirpur
Azad Kashmir (POK)

FIR No.: 22/2012

Police Station: CIK, Srinagar

Offences: Sections 2/3 E&IMCO and Section 14 of the Foreigners Act

Date of Institution of Challan: 14.05.2018

Date of Framing of Charge: 28.06.2018

Date of Closure of Prosecution Evidence: 26.06.2025

Date of Recording of Statement of Accused: 09.07.2025

Date of Decision: 29.01.2026

Ld. APP, *for the Prosecution.*

Adv G.Q.Rather *for the accused persons.*

CORAM: SYED TAYOUB BUKHARI
JO Code: JK00351

J U D G M E N T

1. Heard learned Prosecutor and the Learned counsel appearing for the accused and perused the entire record.
2. Vide this Judgement; the present case shall stand disposed of.

INTRODUCTION

3. The present criminal proceedings arise out of FIR No. 22/2012 registered at Police Station CIK, Srinagar, for alleged commission of offences punishable under Sections 2/3 of the Enemy Agents Ordinance / E&IMCO and Section 14 of the Foreigners Act.
4. The accused was sent up for trial on the allegation that he had illegally crossed over to Pakistan-occupied Kashmir (POK), received arms training, and thereafter returned to India along with his wife and children without valid documents.
5. This Court is required to adjudicate the guilt or innocence of the accused persons on the basis of evidence adduced by the prosecution, keeping in view the settled principles of criminal jurisprudence, namely the presumption of innocence and the requirement of proof beyond reasonable doubt.

FACTUAL MATRIX

6. As per the prosecution case, on 08.08.2012, Police Station CIK, Srinagar, received information from reliable sources alleging that the accused Mohammad Maqbool Rather had, about 21 years earlier, illegally crossed over to POK for the purpose of receiving arms training.
It is further alleged that during his stay in POK, the accused contracted marriage, from which six children were born, and that he subsequently returned to India along with his wife and children without any valid documents.
7. On the basis of the said information, FIR No. 22/2012 under Sections 2/3 E&IMCO and Section 14 of the Foreigners Act was registered. Investigation was conducted, statements of witnesses were recorded, and upon completion of investigation, charge sheet was presented before this Court on 14.05.2018.

CHARGE

8. Vide order dated 28.06.2018, charges for offences punishable under Sections 2/3 E&IMCO and Section 14 of the Foreigners Act were framed against the accused persons.
9. The accused persons pleaded not guilty and claimed trial.

PROSECUTION EVIDENCE

10. In order to prove its case, the prosecution cited eight (08) witnesses. However, despite availing several opportunities, only two (02) witnesses were examined. The remaining witnesses, including the Investigating Officer, were not produced.
11. Consequently, the prosecution evidence was closed vide order dated 26.06.2025.

i. Appreciation of Witness Testimony

PW-03: SGCT Ajaz Ahmad, Belt No. 2488/S, PID No. 022290, posted at CIK, Srinagar. In his examination-in-chief, the witness stated that he knows the accused present in Court. He deposed that the occurrence pertains to 08.08.2012, when information was received through CIK regarding a suspicious person at a bridge. The police party reached the spot and the incharge enquired from the accused. According to the witness, the accused denied having gone to Pakistan. The witness further stated that the accused No. 01 had married in Pakistan and had returned along with his wife. The accused was arrested and brought to the police station, where he made a statement before the Investigating Officer.

During cross-examination, PW-03 stated that he has no personal knowledge as to whether the accused had gone to Pakistan or not. He further stated that accused No. 02 belongs to Azad Kashmir, which is a part of Pakistan. The witness also stated that the accused came back under the surrender policy

and that accused No. 01 had gone only for training and not to any other part of Pakistan.

PW-06: Mohd Amin Rather, S/o Ghulam Ahmad Rather, R/o Kralpora, B.K. Pora, Budgam, aged about 83 years, by occupation Numberdar. In his examination-in-chief, the witness stated that he knows the accused present in Court. He deposed that a long time ago, the accused was engaged in carpet work and had gone to Pakistan. After about two years, the accused returned to Kashmir and had also contracted marriage there. The accused returned along with his wife and children. At that time, the accused was driving a taxi. The witness further stated that the accused was taken by the police to Police Station Ompora and that the witness accompanied him. The accused gave his statement before the police and the witness appended his signature thereon.

During cross-examination, PW-06 stated that he has no knowledge as to when the accused went to Pakistan or when he returned. He further stated that his statement under Section 161 CrPC is not correct, that the offences alleged against the accused are false and baseless, and that he had only heard that the accused had gone to Pakistan

STATEMENT OF ACCUSED

12. After closure of prosecution evidence, the statement of the accused persons were recorded under Section 342 CrPC (now Section 313 CrPC) on 09.07.2025.
13. The accused persons denied all incriminating circumstances, asserted false implication, and chose not to lead any defense evidence.

DISCUSSION AND APPRECIATION OF EVIDENCE

14. It is a settled principle of law that the prosecution must prove its case beyond reasonable doubt. Suspicion, however grave, cannot substitute legal proof.
15. In the present case, the prosecution has failed to produce any **documentary evidence** such as travel records, border crossing details, recovery memos, intelligence inputs, or any material to establish illegal entry, arms training, or violation of the Foreigners Act. Moreover POK is not a part of Pakistan, it is an integral part of India, and has been illegally occupied by the other country. Therefore foreigners act has not been attracted to the accused persons.
16. The testimony of PW-03 is purely hearsay and lacks evidentiary value. PW-06 has resiled or withdrawn from his earlier statement and has not supported the prosecution case.
17. Most importantly, the **Investigating Officer has not been examined**, which is fatal to the prosecution case. The Supreme Court has consistently held that non-examination of the Investigating Officer, without plausible explanation, creates a serious dent in the prosecution version, particularly where the case hinges upon investigation-based facts.
18. The prosecution has failed to establish the essential ingredients of offences under Sections 2/3 E&IMCO or Section 14 of the Foreigners Act. No overt act, mens rea, or illegal act attributable to the accused persons has been proved on record.

FINDINGS

19. On an overall appreciation of the evidence, this Court is of the considered view that the prosecution has **miserably failed** to prove its case beyond reasonable doubt.
20. The evidence on record is insufficient, unreliable, and incapable of sustaining a conviction.

21. The accused persons are therefore, entitled to the **benefit of doubt**, which must necessarily ensure to his advantage.

ORDER

22. Consequently, the accused persons **Mohammad Maqbool Rather and Parveena akhter** are hereby **acquitted** of the charges framed against them under Sections 2/3 E&IMCO and Section 14 of the Foreigners Act.

23. The bail bonds, if any, furnished by the accused persons shall stand discharged.

24. Any seized property, if lying on record, shall be released after the period of appeal is over.

25. The file be consigned to the record room after due compliance.

Announced
29-01-2026

SYED TAYOUB BUKHAROI
JMIC CHADOORA