

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-37786 of 2013 (O&M)

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Date of decision:20.1.2015

Dharamvir Malik

...Petitioner

v.

State of Haryana and another

...Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. V.K. Jindal, Senior Advocate with Mr. A.S. Sheoran,
Advocate for the petitioner.

Mr. Surinder Singh Pannu, Deputy Advocate General,
Haryana, for the respondent-State.

Mr. Sukhdeep Parmar, Advocate for complainant-
respondent No.2.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.685 dated 24.6.2013 registered for the offences under Sections 409 and 420 IPC at Police Station City Panipat, District Panipat and all consequential proceedings pending in the Court of learned Judicial Magistrate Ist Class, Panipat.

It is mainly stated in the petition that the Police Station City Panipat has registered case vide FIR No.685 dated 24.6.2013 for the offences under Sections 409 and 420 IPC at the instance of the Director General, Secondary Education, Haryana, Shiksha Sadan, Panchkula.

Notice of motion has been issued in this case.

Mr. Surinder Singh Pannu, learned Deputy Advocate General, Haryana has put in appearance on behalf of the respondent-State and Mr. Sukhdeep Parmar, learned Advocate has appeared on behalf of the complainant-respondent No.2 and contested this petition.

I have heard learned counsel for the petitioner and learned Deputy Advocate General, Haryana appearing for the respondent-State and learned counsel appearing for the complainant-respondent No.2 and have gone through the record.

From the record, I find that as per the allegations in the FIR, Dharamvir Singh Malik, Principal (Retd.) Government Senior Secondary School Tehsil Camp Panipat had utilized an amount of ₹2,77,112/- for other purpose stated in the order dated 21.12.2006 to meet the expenses of electricity bills. It has also been concluded by the Inquiry Officer that even otherwise the incumbent was not the competent authority to incur expenditure of ₹2,77,112/- at his own level without prior sanction from higher authorities. It is also mentioned that the petitioner has already retired from service on 31.1.2008 and as a consequence of the same, no departmental proceeding can be instituted against him in respect of the event took place more than four years before. It is also written in the letter by the Director General, Secondary Education that in view of the huge embezzlement of ₹2,77,112/- criminal proceedings may please be initiated against him.

At the time of arguments, it is no where the case of the State

or the private respondent/complainant that any of the amount out of this ₹2,77,112/- had been misappropriated by the present petitioner for his own use and personal benefits. The only allegation is that he had utilized the amount of ₹2,77,112/- for other purpose without any sanction from the competent authority. As no amount had been used for personal purposes by the present petitioner, who was Principal of the school at that time, therefore, no offence under Section 409 IPC is made out. In short, it can be said that an amount given to the school under one head has been used under the other head without informing the competent authority. Therefore, when it is a case of the complainant itself that no amount has been used or misappropriated by the present petitioner, then there is no question of embezzlement and no offence under Section 409 IPC is made out.

Similarly, there is no allegation in the reply even filed by both the parties that any of the amount is used in such a way which may have caused loss to the Government and gain to the present petitioner. Therefore, even the ingredients of Section 420 IPC are not made out.

From the perusal of the record, itself it looks that it is a case of departmental irregularity for which the departmental action should have been taken. But the present petitioner had already retired on 31.1.2008 and this FIR was registered on 24.6.2013 i.e. after five years five months. It is itself written in the FIR that as the petitioner has retired from the service, therefore, no departmental action can be taken but this itself is not sufficient to initiate criminal proceedings. Nothing is there to show

criminal intention of the present petitioner to embezzle the amount or to cheat the Government. It is only at the most a departmental irregularity and no offence on the face of it is made out. The registration of the present FIR is nothing but misuse of the process of the law. Therefore, the present FIR along with all subsequent proceedings are liable to be quashed.

Finding merit in the petition, the same is accepted and the FIR No.685 dated 24.6.2013 registered for the offences under Sections 409 and 420 IPC at Police Station City Panipat, District Panipat and all consequential proceedings arising out of the same are hereby quashed.

January 20, 2015.

(Inderjit Singh)
Judge

hsp