

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-44013-2013 (O&M)

Date of decision: 24.08.2015

Surat Singh Malik

... Petitioner

Vs.

State of Haryana and anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Rakesh Nehra, Advocate
for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

None for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Petitioner prays for quashing of the impugned FIR No.11 dated 06.01.2010 under Sections 406, 409, 420, 467, 468 and 471 of Indian Penal Code ('IPC' for short), registered at Police Station Rohtak Sadar, District Rohtak, impugned police report under Section 173 Cr.P.C. and the subsequent criminal proceedings arising therefrom, by invoking the inherent jurisdiction of this Court, through instant petition filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short).

Notice of motion was issued. Nobody appeared on behalf of respondent No.2-District Primary Education Officer, Rohtak, despite service,

as recorded by this Court in its order dated 21.03.2014 and the case was posted for arguments. However, reply on behalf of respondent No.1 by way of affidavit dated 19.03.2014 was filed and thereafter, reply on behalf of respondent No.2 was also filed by way of affidavit dated 11.05.2014.

Learned counsel for the petitioner submits that impugned FIR as well as police report under Section 173 Cr.P.C. contained in Annexure P-1 and Annexure P-2 respectively, were nothing but blatant misuse of process of Court. He places reliance on the repeated inquiry reports contained in Annexures P-3 and P-4 conducted by Block Education Officer, Meham and second one conducted by Deputy Director, office of Director, Secondary Education, Haryana, wherein no charge levelled against the petitioner, was substantiated and he was completely exonerated. He also refers to Annexures P-5 to P-7 which speak volumes in favour of the petitioner, to contend that continuation of the impugned criminal proceedings arising out of the impugned FIR, would result in further miscarriage of justice. He concluded by submitting that although alleged occurrence regarding alleged embezzlement of the amount of scholarship took place between the year 1999-2006 and repeated inquiries had already been conducted by the Department. No charge was proved against the petitioner in the year 2007 (Annexure P-3), yet the impugned FIR came to be registered as late as on 06.01.2010 (Annexure P-1), at the hands of complainant-respondent No.2, which clearly amounts to glaring misuse of process of Court. As a matter of fact, no competent authority ever held the petitioner responsible in this regard, at any point of time and he is being forced to face the agony of criminal trial, causing grave injustice to the petitioner. He prays for quashing the impugned FIR (Annexure P-1), police report (Annexure P-2) as well as the consequential criminal

proceedings arising therefrom, by allowing the present petition.

On the other hand, learned counsel for the State submits that although it was a matter of record that repeated inquiries were conducted by the complainant-Department and charges were not proved against the petitioner, yet involvement of the petitioner in the commission of offence cannot be ruled out. Explaining the long delay in the registration of the impugned FIR, learned counsel for the State submits that since the matter was being looked into at the level of complainant-Department, it took some time. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, present one has been found to be a fit case for interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

A bare combined reading of the impugned FIR (Annexure P-1), impugned police report under Section 173 Cr.P.C. (Annexure P-2), inquiry reports (Annexures P-3 & P-4) as well as the other relevant record available on the case file, would make it crystal clear that some disgruntled persons are after the blood of the petitioner, only with a view to wreck their personal vengeance and that too, by resorting to the glaring abuse of process of Court. Although the alleged occurrence took place at some time between 1999-2006, yet the complainant-Department has never shown any inclination to look into the matter at appropriate time and take it to the logical end. Whenever any

inquiry was conducted either by an Inquiry Committee or by a senior officer of the rank of Deputy Director of the complainant-Department, either before or after the registration of impugned FIR, the controversy was not being allowed to come at its logical end, for one or the other extraneous considerations and undisclosed reasons, by the authorities that may be. Petitioner was being forced to face the repeated departmental inquiries which have culminated into his favour and then he was forced to face this wholly unwarranted criminal trial without their being any material available against him. Having said that, this Court feels no hesitation to conclude that the impugned FIR as well as all the consequential proceedings arising therefrom, including the police report (Annexure P-2) and the charge-sheet are liable to be quashed, so as to prevent any further abuse of process of Court and also to secure the ends of justice.

From a bare perusal of the detailed inquiry reports conducted by an Inquiry Committee as well as a senior officer of the complainant-Department itself, would leave no room for doubt that petitioner did nothing wrong except to perform his official duties and that too working diligently. Detailed inquiry conducted by the Inquiry Committee comprising of Block Education Officer, Meham and others, before registration of the impugned FIR, would show that the charges levelled against the petitioner were found to be totally frivolous.

Detailed inquiry report dated 18.06.2007 (Annexure P-3) is available on record and relevant part thereof, reads as under: -

“Para No.2 on dated 09.06.2007, Shri Surat Singh JBT (against whom the complaint is), Principal, Govt. Primary School, Makrauli Khurd, the entire staff of the Govt. Primary Model

School, Rohtak, the school reform committee, etc., were also called upon and were handed over different questionnaire by the committee. All the above stated employees had submitted their respective answers being written by them with the inquiry committee. Shri Surat Singh, JBT (against whom the complaint is) had provided his answer sheet while claiming himself to be innocent and had provided the copies of documents/evidence with self attested from page 1 to 47. (copy enclosed).

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Para No.4, on dated 14.06.2007, all the teachers who were posted in the Govt. Primary Model School, Makrauli Khurd w.e.f. 1999 to 2006 were called upon in the office of the Deputy District Education Officer, Rohtak and they were handed over the questionnaire and asked to file its reply pertaining to the scholarship amount distribution to the SC candidates and about the verification of their signatures upon the scholarship distribution register. All of them had also verified the distribution of amount to SC students and their signatures to be correct and stated that there was no wrong committed in the distribution. Every kind of scholarship were distributed in their presence.

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“....For the purpose of verification of the present photocopies of SC distribution register, the committee called upon the posted teachers at that time on 14.06.2007. They have given in the written that the present photocopies from 1999 to

2006 bears their signatures which are correct and the distribution has been done correctly. They stated that at the time of distributing the scholarship, the parents were also called upon and at no point of time the students or the parents had ever filed any complaint with regard to non receiving the amount at that time. Therefore, from the statements of the above stated teachers, there had been no doubt left pertaining to the distribution of SC scholarship, with the committee.

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The Committee in the concerned matters, after carefully going through the statements of all the persons/employees/officers, documents and evidence on record and after investigating the different records and considering thoroughly and minutely, reached to its conclusion that all the allegations as stated above leveled by the complainant are totally baseless. Therefore, the inquiry report is presented to you for necessary action.

Sd/- The Inquiry Committee

Block Education Officer

Meham (Rohtak)”

A bare glance on the abovesaid cogent findings recorded by the Inquiry Committee, would show that the allegations levelled against the petitioner were motivated and without any substance. However, it is surprising that still the impugned FIR was registered after a period of two and half years on 06.01.2010, whereas inquiry report was dated 18.06.2007. Another inquiry which was conducted by none else but by the Deputy

Director of the complainant-Department itself, was a more detailed one than the abovesaid inquiry report (Annexure P-3). Interestingly, this inquiry report was submitted by the Deputy Director of the complainant-Department, after a period of more than one and a half years of registration of the impugned FIR.

This second inquiry report is dated 19.09.2011 (Annexure P-4) which is running into as many as 11 pages and the relevant part thereof, reads as under: -

“During the course of investigation all the subjected students and their parents were enquired about distribution of amount to them. None of the student or parent had raised any objection with regard to the distribution of the amount and thus, it is clear that Surat Singh had distributed the amount to all concerned students which he received from Division Education Officer and there is no case of embezzlement. This has been certified by the teachers posted in the School in their respective statements. Copy of the statement of teachers is enclosed. No charge is proved against this employee in this regard.

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With regard to charge No.2, the students and their parents were enquired about the charge No.2 and they have clarified that their wards have duly received the amount and the signatures put by the parents without any knowledge hence, in such manner there is no case of embezzlement against Surat Singh JBT Teacher. In this regard the copy of the affidavits of receiving the amount by student Yogeshwar son of Om Parkash, Parveen S/o Jai Singh, Vishal S/o Satyawar are enclosed.

Hence, it is proved that Surat Singh had not committed any serious irregularity or cheating and had never embezzled any amount.

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During the course of investigation, it has been found that since the amount was only Rs.10/- per student therefore, for such less amount, instead of the parents, the amount was distributed in the presence of teachers and the signatures of the teachers were also obtained therefore, this charge has been found to be baseless because no student/parent had reported to not have received the amount.

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No evidence has been found against the employee in the investigation therefore, the employee cannot be an accused in this regard.

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The investigating officer is agreed with the explanation given by the employee and the employee cannot be made accused for this charge.

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During the inquiry, no charge is proved against the employee.

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Sd/-

Karan Singh Sehrawat,

Deputy Director, HRL, Inquiry Officer,

*Office of Director Secondary Education,
Haryana, Panchkula. 19.09.2011”*

There is another communication available on the record in the form of Annexure P-6 which was sent to the District Primary Education Officer, Rohtak by more than 30 respectables of the village, including Sarpanch thereof, where the petitioner remained posted from 1998-2006, during which period the alleged occurrence took place. Relevant part of this communication at page 38 of the paper book, reads as under: -

“That Sh. Surat Singh teacher who was posted in Makrauli Khurd from 1998 Oct. 2006, had performed his duties of plantation of trees, school building construction and education matters with full hardships, honesty and integrity, his relations with students and parents were cordial and his work was satisfactory and appreciable.

That we also want to point out that two outsider teachers who enticed the retired Principal, Thawaria and along with him Ishvar Singh S/o Surat Singh and other person of the community had filed a false, frivolous and baseless complaint against Sh. Surat Singh and got signatures of all of them.

That it has also come in knowledge that on the complaint dated 26.06.2007, some persons had put their signatures but they are illiterate and some of the signatures are forged. Neither persons of any community had given the complaint dated 26.06.2007 to the DC Rohtak against Surat Singh teacher. It appears that this complaint has been filed due to personal vendetta and the signatures have been obtained by visiting door

to door and they have themselves given this complaint in the DC office. There should be strict departmental and administrative proceedings against teachers who have committed such cheap misdeeds. Because Ishwar Singh and other persons had not made any complaint in the meetings of DCT or Distt. Dispute Redressal Committee at Rohtak.”

There is yet another important document available on the record in the form of Annexure P-7, whereby office of the Director General, Primary Education, Haryana-complainant/Department, had to supply to the petitioner certain information, in response to his application under Right to Information Act, 2005, but only after appropriate directions were issued to the complainant-Department in the appeal filed by the petitioner before the State Information Commission, Haryana. Information was supplied to the petitioner in response to his three appeals filed by him before the State Information Commission, Haryana and in compliance of appellate orders dated 24.09.2013.

Information supplied to the petitioner at point 19 at page 41 of the paper book, by the office of Director General, Primary Education, Haryana vide Annexure P-7, reads as under: -

“With regard to this information, you have shown your satisfaction towards this point before the commission. It is also pointed out here that after analyzing all the inquiry reports against you, it has been noticed that the allegations of embezzlement of scholarship amount of Rs.57435/- leveled against you has not been proved directly in any of the inquiry report. The certified copies of all the inquiry report is annexed

herewith.”

After the careful perusal of the abovesaid inquiry reports (Annexures P-3 & P-4), communication (Annexure P-6) as well as the information supplied by none else but by the complainant-Department itself, this Court is satisfied that the complainant-Department has put the petitioner to wholly unwarranted harassment, without there being any kind of fault on his part. Initiating the criminal proceedings, under these circumstances, certainly amounts to glaring misuse of process of law. Thus, it can be safely concluded that such kind of unwarranted criminal proceedings cannot be allowed to proceed further any more and the same are liable to be quashed.

The abovesaid view taken by this Court also finds support from the law laid down by the Hon'ble Supreme Court in its celebrated judgment in the case of **State of Haryana and others Vs. Bhajan Lal and others, 1992 AIR 604**. The relevant guidelines laid down by the Hon'ble Supreme Court in Bhajan Lal's case (supra), in this regard, which can be gainfully followed in the present case, read as under: -

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or

'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

Reverting back to the facts of the case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in Bhajan Lal's case (supra), which has been consistently followed in the later judgments as well, it is unhesitatingly held that continuation of the criminal proceedings

arising out of the impugned FIR against the petitioner, would amount to further abuse of process of law, because of which the impugned FIR as well as impugned police report under Section 173 Cr.P.C. cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition deserves to be allowed. Consequently, impugned FIR No.11 dated 06.01.2010 (Annexure P-1) under Sections 406, 409, 420, 467, 468 and 471 IPC, registered at Police Station Rohtak Sadar, District Rohtak, impugned police report under Section 173 Cr.P.C. (Annexure P-2) and the subsequent criminal proceedings arising therefrom, are hereby quashed.

Resultantly, with the abovesaid observations made, present petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

24.08.2015
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