IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21946 of 2015
Date of decision: 19.10.2015

Narinder Singh and another

……Petitioners

Union of India and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Amit Sharma, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. The petitioners pray for issuance of a writ in the nature of mandamus directing respondent No.2 – Joint Director (Admn.) Enforcement Directorate, New Delhi to investigate the complaint dated 9.7.2015, Annexure P.1 and thereafter to initiate appropriate action against the accused persons for their act of making fictitious transactions of more than ₹ 1000 crores through bank accounts opened and operated by respondent No.6 – Jatinder Singh Dua which had been unambiguously held as bogus by respondent No.3 vide communication dated 27.4.2015.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. Petitioner No.1 is resident of State of Punjab and is Director of petitioner No.2 which is a

company incorporated under the Companies Act, 1861 and having its registered office at Mohali. With the object to carry on business of management consultancy, one company under the name and style of M/s International Customer Related Management Services Pvt. Limited was incorporated in the year 2001. The prime objects of the company were to carry on the business of management consultancy, guidance in the field of information technology and to carry on the business of management consultancy in the field of project management and management information. Since the inception of the company, one current account was got opened in Punjab National Bank, Sector 17, Chandigarh which for all intents and purposes was used by the company. Till date the said account is operative. One Shri Gunihan Singh Pirzada who at the relevant time was pasted as Managing Director of the Punjab State Electronics Development and Production Corporation Limited had an eye on petitioner No.2 company for the fulfilment of his oblique motive. Her intended to get his black money converted into white in connivance of his friend Jabinder Singh Rai who is associated with DLF. They also associated respondent No.6 as member of their team. All the accused mentioned in the complaint dated 9.7.2015, Annexure P.1 in connivance with each other decided to open accounts in the name of petitioner No.2 company and for doing so, since they were not associated with the company fabricated the documents facilitating opening of current accounts and in those documents respondent No.6 was made sole signatory for its operation though he was not associated with the company. By cheating the Banks i.e. Respondent Nos. 4 and 5, respondent No.6 was successful in opening two current accounts bearing

Nos.02132320000945 and 001305005564. Respondent No.6 being the sole signatory started operating the bank accounts and the transactions made in these accounts were projected to be the sale proceeds of sale of land to the various companies. According to the petitioners, connivance of all the persons mentioned above stood established from the fact that they were paid commissions worth crores of rupees from these bogus accounts and the payments so derived were never accounted for by these persons. The bogus accounts were operated in the name of the company but neither the company had any knowledge nor it was beneficiary in any respect. All the money which was transacted through these accounts was being collectively transferred to the benami companies incorporated by Shri Gurnihal Singh Pirzada and respondent No.6 in the names of their close relatives. The complaint made by the petitioners was probed by the concerned banks and the accounts were found to be false and bogus and were seized. Since no action was initiated against the person operating these accounts, the petitioners made complaint to respondent No.3. The petitioners gave various reminders but no action was taken on the complaint. Hence the instant writ petition.

3. We have heard learned counsel for the petitioners.

4. From the perusal of the narration of facts noticed above, it is evident that disputed questions of fact are involved herein. It would, thus, not be appropriate in writ jurisdiction to adjudicate the same as the factual matrix would require to be established by producing material evidence in that regard. In such a situation, we do not find justification to entertain this petition under Articles 226/227 of the Constitution of India.

5. Examining the scope of writ jurisdiction under Article 226 of the Constitution of India where disputed questions of facts are involved, a Division Bench of this Court in ***N.C.Mahendra v. Haryana State Electricity Board and others***, AIR 1984 Punjab 26 had laid down that ordinarily a writ would not issue in favour of a person where disputed questions of facts are raised. The relevant portion reads thus:-

> "12. An identical legal position ensures within this country and High Courts have repeatedly held that the exercise of jurisdiction under Article 226 of the Constitution is discretionary and not obligatory without being exhaustive, it is settled law that the Court would not ordinarily issue a writ in favour of a person, who has (i) an adequate alternative remedy, (ii) who is guilty of delay which is unexplained, (iii) who is guilty of conduct disentitling him to relief, (iv) where the interest of justice do not require that relief should be granted, (v) where the petitioner raises a disputed question of fact, (vi) where the grant of writ would be futile, and (vii) where the impugned law has not come into force. It would follow from the above that the grant or refusal of a writ is within the judicial discretion of the Court and that indeed is the line which divides the extra ordinary remedy from the ordinary one by of a civil suit." (Emphasis supplied).

The Hon'ble Supreme Court in **State Cadre Authority and another v. K.S.Bajpal and others,** (1990) (Suppl.) SCC 713, **Bhagubhai Dhanabhai Khalasi and another v. The State of Gujarat and others,** (2007) 4 SCC 241 and **Mukesh Kumar Agrawal v. State of UP and others, (**2009) 13 SCC 693 has held that wherever disputed question of fact is raised in writ proceedings, the writ petition was not an appropriate remedy. Reference may also be made to the judgment of the Apex Court in ***Dwarka Prasad Agarwal***

(D) by Lrs. and another vs. B.D.Agarwal and others, AIR 2003 SC 2686, wherein it was observed as under:-

> "We may, however, hasten to add that as at present advised we do not intend to enter into the contention of the petitioners that their fundamental right under Article 19 of the Constitution of India had been infringed. This Court would have entered into the question, if the facts were undisputed or admitted. The question as regard infringement of fundamental right and that too under Article 19 of the Constitution of India cannot be gone into when the facts are disputed. Whether Dwarka Prasad Agarwal and consequently the substituted petitioners are owners of the newspapers and if so to what extent being disputed, it cannot be said, that by reason of the impugned order dated 3.9.1992 passed by the first respondent herein alone, the fundamental right of the petitioners under Article 19 had been infringed."

6. In view of the above, we do not find any justification to entertain the writ petition as the factual matrix involved requires to be probed thoroughly before any findings on facts could be arrived at. Consequently, the petition stands dismissed.

(Ajay Kumar Mittal)
Judge

October 19, 2015
'gs'

(Ramendra Jain)
Judge