

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No. 3028 of 2015(O&M)
Date of decision: 20.01.2016**

Mohinder Kaur

... Petitioner

versus

Deputy Commissioner and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. N.S. Dandiwal, Advocate for the petitioner.

Ms. Harpreet Kaur Dhillon, Advocate for respondent No.2.

K.Kannan, J. (ORAL)

The revision petition is against the order directing the recount of votes. The petitioner was winning candidate to the post of Panch. The respondent who had lost out in the election result declared had complained that on the date when the votes were counted, she was stated to have been elected but final declaration was not done. The election petition was filed stating that the corrupt practice was indulged by the winning candidate with her political connections to the ruling party and got announced result in her favour one week later. The respondent was relying on an affidavit said to have been given by the petitioner admitting to the fact that she trailed behind the respondent in the tally of vote. At the time of trial before the Election Tribunal, the affidavit was confronted to the petitioner herein and was denied having given any such affidavit admitting that the respondent herein had higher vote tally.

The Election Tribunal without passing a final order has passed the interim order for recount of votes. The order is unsupportable. Recount is possible only on the satisfaction entered by a judicial reasoning that the result was wrongly declared and that there

material to suspect the correctness of the decision already made declaring the petitioner herein as a successful candidate. The mere reference to an affidavit alleged to have been filed in the order cannot suffice. Unless the Election Tribunal took a decision that it was finding that the affidavit was genuine and that, therefore, the election result could not be considered as legitimate, the mere direction for recounting will mean an arbitrary decision that comes in the way of the decision brought through the democratic process of voting and election.

The impugned order is set aside and remanded to the Election Tribunal to take the decision as regards the respective contentions raised and only after taking the decision on the respective contentions made in the area of controversy of whether there had been any corrupt practice as set out in the petition, it shall pass orders on the basis of such decision which might also include a direction for recounting. It is the product of reasoning that can give rise to a decision to recount, for, the decision that has now been rendered is literally putting the cart before the horse.

The civil revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

20.01.2016

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