

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

CRM-M No.41977 of 2015
Date of decision: 8th November, 2016

Charanjit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. D.S. Sandhu, Advocate
for the petitioner.

Mr. Preetinder S. Ahluwalia, Advocate
Amicus Curiae.

Mr. Amit S. Sethi, Addl. Advocate General, Punjab
for respondents No.1 to 4/State.

None for respondents No.5 and 6.

Mr. NPS Mann, Advocate
for respondent No.7.

FATEH DEEP SINGH, J.

***“Power tends to corrupt and absolute power corrupts
absolutely”*** these words by Lord Acton published more than 125 years
ago in Historical Essays & Studies, even in this modern era of fast
changing lifestyles still holds good. Precisely this is the summarial
residue that remains as a decantant in this petition under Section 482 of
the Code of Criminal Procedure (in short, ‘Cr.P.C.’) preferred by
petitioner Charanjit Singh seeking issuance of directions to respondents

No.1 to 4 for initiation of criminal proceedings against respondents No.5 to 7 regarding his allegations of embezzlement of public funds.

The factual background what has led to initiation of this petition has arisen out of the allegations that respondent No.5 at the relevant time happened to be Sarpanch of Gram Panchayat Mehmadwal, District Kapurthala under the administrative command and control of respondents No.4, 6 and 7. It was under the popular Government scheme known as 'Indira Gandhi Awaas Yojana' (hereinafter referred to as, 'the Scheme') launched for providing homes to homeless persons in the rural areas, grants were allocated to various villages including the one represented by respondent No.5 which they were supposed to strictly utilize in consonance with the aims and objects of this Scheme. It is alleged that respondent No.5 in connivance with respondents No.4, 6 and 7 hatched a criminal conspiracy, colluded and connived and intentionally for undue benefits and gains, misappropriated/embezzled/misutilized the grant under this Scheme and even facilitated the same to undeserving persons who were not covered under the Scheme and already owned their own houses and agricultural land. It was on the representation of the petitioner and other co-villagers initially nothing transpired but subsequently led to inquiries (Annexures P9 and P10) which were conducted by the Department whereby the Sarpanch/respondent No.5 was held guilty for acts of omission and commission and thus, claimed to have misconducted himself and to

legitimize his acts it is alleged, that he has put false signatures/thumb impressions and therefore, has also committed forgery and fabrication of the records, regarding which three civil writ petitions bearing CWP No.9567 of 2013; CWP No.25222 of 2013 and CWP No.15873 of 2014 were filed before this Court where orders were passed at various stages for initiation of action into the matter and inspite of inquiry by Deputy Director (HQ), Rural Development and Panchayats recommending the BDPO to take action against respondents No.5 to 7 by virtue of office letters (Annexures P13 and P14), but even this did not bear any fruitful results. Dismayed over subsequent events whereby nothing materialized inspite of these indications of the respondents has led to filing of the instant petition by the disgruntled petitioner.

The unison stand of the respondents in their two sets of replies filed at two different points of time, one a vague and ambiguous but a subsequent one though has admitted that an application dated 26.11.2012 was received in the office of Director, Vigilance Bureau, Punjab, Chandigarh from the residents of village Mehmadwal, District Kapurthala against misconduct of Sarpanch of their Gram Panchayat but it was claimed that in consequences of letter No.10/14/07-3BA/11606 dated 28.07.2007 by the State Government to the Director Vigilance Bureau, Punjab, Chandigarh whereby instructions (Annexure R-1/T, also referred to as Annexure R-3/T) were issued that Vigilance Department should take action on the complaint of the people against

panchayat only after getting the same inquired into from the concerned Department and if the Panchayat members are found at fault, only then Vigilance Department may take action. It is duly admitted by the State that in the enquiry against respondent No.5 Assa Singh (now Ex. Sarpanch and present Panch) by the Director, Rural Development and Panchayats Department, it was intimated on the basis of letter bearing No.6/46/12-Kapurthala-S/2259 dated 18.03.2016 that the said Ex.Sarpanch was found guilty of embezzlement to the tune of Rs.4,72,000/- of the Panchayat funds under the Scheme regarding which a show-cause notice under Section 20 of the Punjab Panchayati Raj Act, 1994 was issued to him and subsequently he was exonerated from these charges. Thus, from this all, it permeates and could not be assailed by the learned State counsel Mr.Amit Singh Sethi, Additional Advocate General, Punjab that by the said inquiry Assa Singh respondent No.5 was found guilty for having embezzled Panchayati funds and it was subsequently after issuance of show cause notice under the Panchayati Raj Act he was exonerated.

Though much fanfare has been sought to be raised over the fact that at the relevant time, respondent No.5 did not fall within the definition of a 'public servant' certainly to the mind of this Court is a fallacious one purely to ward off the likely consequences arising out of such allegations of misconduct by the then Sarpanch of the village. This Court seeks support from '**Central Bureau of Investigation, Bank**

Securities & Fraud Cell v. Ramesh Gelli and others’ 2016(2) RCR (Criminal) 259 where the Hon’ble Supreme Court of India giving extensive definition to the term ‘public servant’ and extending its definition has held that Section 2(c) of the Prevention of Corruption Act, 1988 (in short, ‘the P.C. Act’) which defines it as under:

“2.(c) "public servant" means-

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;*
- (ii) any person in the service or pay of a local authority;*
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;*
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;*
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;*

- (vi) *any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;*
- (vii) *any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;*
- (viii) *any person who holds an office by virtue of which he is authorised or required to perform any public duty;*
- (ix) *any person who is the president, secretary or other office-bearer of a registered cooperative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956;*
- (x) *any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;*

- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;*
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.*

Explanation 1 – Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2 – Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

Their Lordships elaborating the scope have further remarked that this definition shows that under Clause (viii) of Section 2(c) of the P.C. Act, any person who holds an office by virtue of which he is authorized or required to perform any public duty, is deemed to be a public servant and Section 2(b) of this Act defines 'public duty' to mean

a duty in the discharge of which the State, the public or the community at large has an interest'. Even otherwise, by virtue of Section 21 of the Indian Penal Code, the term 'public servant' has been given a large and extensive definition which is reproduced as below:

“21. ‘Public Servant’ – The words ‘public servant’ denote a person falling under any of the descriptions hereinafter following; namely:-

Second – Every Commissioned Officer in the Military;

Third – Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth – Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth – Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth – Every arbitrator or other person to whom any cause or matter has been referred for decision or

report by any Court of Justice, or by any other competent public authority;

Seventh – Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth – Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth – Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth – Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh – Every person who holds any office in virtue of which he is empowered to prepare, publish,

maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth – Every person -

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;*
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).”*

Thus, this definition leaves no scope to hold leverage for the learned State counsel to help his case to take respondent No.5 or his conspirators out of the purview of the Prevention of Corruption Act, 1988 or the definition of a ‘public servant’.

The next question that has cropped up during the course of submissions of the two sides, hovers around whether or not it is necessitated that there ought to be a prior sanction for prosecution of respondent No.5 who by virtue of his status as a Sarpanch and his duties in that capacity along with his co-respondents No.6 to 7, the latter being definitely Government servants, for which this Court seeks support from **‘Vineet Narain v. Union of India’ 1998(1) RCR (Criminal) 357**, wherein their Lordships of the Hon’ble Supreme Court were of the opinion that everyone against whom there is reasonable suspicion of

committing a crime has to be treated equally and similarly under the law and probity in public life is of great importance; and where accusation of corruption is based on direct evidence and does not require any inference to be drawn dependent on the decision making process and thus they need to classify them differently. In the present case, accusation of embezzlement of public funds under the Scheme so received by the then Sarpanch has been duly inquired into supported by direct evidence by different officers in the Administrative hierarchy and thus to the mind of this Court no other factor is relevant and the level as well as status of the present offender becomes irrelevant and meaningless and therefore, in terms of Section 197 of Cr.P.C. as well and that too at a time when respondent No.5 has ceased to be Sarpanch holding that position which he has misused, does not necessitates grant of prior sanction for his prosecution and even otherwise qua his co-respondents who have acted beyond the scope of their public duties cannot hide under the umbrella of this principle of 'prior sanction' and by no means their conduct is attributable to the discharge of their public duties or has any direct nexus, for which reliance is placed on '**State of Punjab v. Labh Singh**' 2015(1) RCR (Criminal) 287.

An allied act done by a public servant during the exercise of official duty whereby he also commits an illegal act in the same transaction, not directly connected, resulting in misappropriation defalcation of public funds/property to the mind of this Court can never

be termed to be in the discharge of public duties or in a public capacity, for which reliance is placed on '**Siri Kishan v. State of Haryana**' **2000(4) RCR(Criminal) 383**. Thus, it is emphatically clear that not every offence committed by a public servant requires sanction for prosecution and the present attribution is quite separable from the official duties of these respondents and does not call for sanction for prosecution. Even in **Vineet Narain's case (ibid)** stress has been laid down that it is not always necessary that a prior sanction should be there to prosecute the public servant. Thus, this Court is of the opinion that prior sanction for prosecution certainly is not necessary, sufficiently answers the arguments put forth by learned State counsel.

The other contentious issue that has cropped up during the course of arguments primarily is aimed at to sabotage furtherance of action into the matter for politically motivated cause. Hon'ble the Supreme Court in '**Lalita Kumari v. Govt. of U.P. and others**' **2013(4) RCR (Criminal) 979** which has also been relied upon by learned State counsel as well as by learned Amicus Curiae who has assisted to a great extent this Court, wherein it was laid down the eventualities and the categories of cases where registration of an FIR is necessitated and one of the primary objects was to not only to set into motion criminal process but as well as to ensure transparency in the criminal justice delivery system which provides an efficient mode to check such political interferences which is reflective in abundance in the present case and

rather has become a “MASCOT” for modern day governance. When it is own case in the reply submitted by the State that a written complaint was made to the Director, Vigilance Bureau and therefore, the Court ought to ensure that there is due compliance of Sections 154(1) and 157(1) of the Cr.P.C. and that too when the administrative authorities have finally reached at a conclusion as to this factum of embezzlement of public funds by the Sarpanch in connivance with the other official respondents, are matters which impinge the conscience of the Court that it was mandatory for registration of the FIR and the Vigilance Bureau was bound to register the same after having received the information in writing and that too upon intimation to them by the higher authorities of the Department of Panchayats, a conclusive finding on the administrative side holding the guilt of the respondent/Sarpanch and others, are matters which further strengthens the stand of the petitioner impelling this Court to hold that the reasons that are fraught with political interferences and thus, even the exercise of extraordinary powers by this Court, which otherwise ought to be sparingly and consciously undertaken only in exceptional circumstances, needs to be put to use so as to bring about credibility and instill public confidence in the system, and to hammer home his point the learned Amicus Curiae has placed reliance upon ‘**Dr. Subramanian Swamy v. Union of India**’ 2014(2) RCR (Criminal) 822; ‘**Lalita Kumari v. Govt. of U.P. and others**’ 2013(4) RCR (Criminal) 979; ‘**State of West Bengal & others**

v. Committee for Protection of Democratic Rights West Bengals & others’ 2010(2) RCR(Criminal) 141; ‘M.C. Mehta v. Union of India & others’ 2007(1) RCR (Criminal) 266; and ‘Manohar Lal Sharma v. The Principal Secretary & others’ 2014(1) RCR (Criminal) 370.

To enliven his arguments, Mr.Amit Singh Sethi, Additional Advocate General, Punjab has sought to place reliance on a judgment of the Division Bench of this Court in **‘Ashok Chaudary v. State of Punjab & others’ (CWP No.9256 of 2002 decided on 15.05.2006)**, where this Court in a collective decision in a number of civil writ petitions has too relied upon **Vineet Narain’s case (ibid)** to bring about the fact that under Article 162 of the Constitution of India though such fetters can be put upon Vigilance Bureau for seeking prior approval of the administrative committees, a condition precedent for the initiation of any action thereon which had already rendered a finding and not acting thereon and thus, thereby meaning to restrict the purview of provisions of Sections 154, 155, 156 and 157 of Cr.P.C.

It needs to be reminded here that the Vigilance Bureau has been empowered to inquire into the allegations against all public servants as defined under the provisions of Prevention of Corruption Act, 1988. Though it was initially restricted to Punjab Government employees and members of All India Services however, subsequently with new instructions had went on to the employees of autonomous and statutory bodies including Corporations and Improvement Trusts and

thus, as on date has within its ambit all public servants with few exceptions.

No doubt, the Vigilance Bureau ordinarily is not supposed to take cognizance of anonymous and pseudonymous complaints unless and until they contain specific allegations of verifiable nature and therefore such complaints requiring administrative action are referred to Administrative Department concerned for necessary action. Precisely in this case, there has been due adherence whereby the Central functionaries of the Department of Panchayats have admittedly inquired repeatedly into these allegations and had ultimately reached a conclusion as to the embezzlement of public funds so given to the Panchayat under the Scheme amounting to Rs.4,72,000/- during that very relevant period. So a mere exoneration after a notice under Section 20 of the Panchayati Raj Act was issued, certainly to the mind of this Court becomes meaningless, rather a political ploy to aid and thus to abet commission of the offence by the perpetrators of this crime whereby economically poor persons have been robbed of their chances of having a roof over their heads, are matters which needs to be taken with more sensitivity as, such like scandals under various other social upliftment schemes meant for bringing about social change and upliftment, are rather becoming an easy tool to earn at the hands of grassroots level political supporters. Thus, seeking support from '**State of NCT of Delhi v. Ajay Kumar Tyagi**' 2012(4) RCR (Criminal) 297 where a question arose whether

the prosecution against an accused in the situation of his exoneration on identical charge in the Departmental proceedings could continue, and their Lordships were of the opinion that such a prosecution cannot be terminated on the grounds of exoneration in the Departmental proceedings in all such circumstances and where their Lordships have considered a catena of case law holding that exoneration in Departmental proceedings ipso-facto would not lead to exoneration or acquittal in a criminal case as their Lordships were of the view that the strength of proof in Departmental proceedings is on a lower side than that in the criminal prosecution and each of them have to be decided as per evidence adduced before it. Thus, this argument by the learned State counsel falls to the ground and does not bears any worthwhile fruit for him that the Department has exonerated Assa Singh respondent No.5 after his reply to show-cause notice under the Panchayati Raj Act was received.

The most hotly debated issue that has come forth before this Court, though this Court seeks to refrain from showing much indulgence into the point, whether such an administrative circular (Annexure R-1/T) can override the rules, is well answered by this Court by seeking support from **‘Central Bureau of Investigation, Bank Securities & Fraud Cell v. Ramesh Gelli’ (ibid)** where a larger Bench of Hon’ble the Supreme Court has held that the position is very much clear where reliance was placed on the case of **‘Sant Ram Sharma v. State of**

Rajasthan’ (1968) 1 SCR 111 to the effect that *“It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”*

In the present case, the circular (Annexure R-1/T) so purported to have been issued is neither a statutory one and is more of a correspondence addressed to the Director, Vigilance Bureau, Punjab, Chandigarh whereby the Additional Secretary (Vigilance) has informed the Vigilance Bureau that Rural Development and Panchayat Minister, Punjab has brought to the notice of the Hon’ble Chief Minister that the Vigilance Department is harassing the Panchayats on bogus and false complaints and that the Hon’ble Chief Minister has desired that on the complaints of people, first inquiries may be got conducted from the concerned Department and if the person is found guilty then Vigilance Bureau may take action accordingly and thus, has termed and directed the Vigilance Bureau to comply with the orders of the Chief Minister.

Thus, by any means even if loosely construed, as is sought to be enforced with much vehemence and elance by learned State counsel, such a desire by the legislative and political head of the State cannot override the provisions of law, that too of the Central Legislations, the Prevention of Corruption Act, 1988 as well as the Code of Criminal Procedure which have enacted specific statutory provisions

to deal with such situations and therefore, without saying much on that as it has been brought to the notice of the Court that civil writ petitions are already pending challenging these circulars, it would suffice to hold that such an order can by no means put an end to the governance of the law of the land which prevails and needs to be accepted and respected by all citizens of the country. Thus, in the light of the same, the letter/circular in question containing instructions (Annexure R-1/T or R-3/T) so impugned before this Court are bad in law and thus, exercising inherent powers under Section 482 Cr.P.C. this Court deems it expedient in the interests of justice to issue directions to respondent Nos.1, 2 and 3 to immediately register an FIR on the complaint (Annexure P4) of the petitioner and thereby to take appropriate proceedings expeditiously till its logical conclusion for the prosecution of culprits whoever may be, and howsoever high they may be as per law and to ensure that whoever has connived in the commission of this offence does not go scot-free. There may be a situation where similar complaints might have been filed throughout the State of Punjab against the Gram Panchayats and the concerned department officials which may have been put in deep freezer for obvious reasons and motivated cause, impels this Court to issue necessary directions to the DGP (Vigilance)/Director Vigilance Bureau, Punjab to constitute separate teams headed by the Director Vigilance Bureau, Punjab for each of such districts in the State of Punjab which team would include respective Senior Superintendent of Police

(Vigilance) of the concerned district and senior officers in no case below the rank of Superintendent of Police, to scrutinize such complaints, register FIRs and initiate investigations immediately. The Director, Vigilance Bureau, Punjab shall submit periodic reports preferably after every 20 days of the necessary steps that have been initiated in this case and other cases, if any, till submission of challans before this Court.

The petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

November 8, 2016

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No