

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M No.43085 of 2015

Date of Decision:- 2nd March, 2016

Satpal Ram.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Rajesh Punj, Advocate for the Petitioner.

JASWANT SINGH, J.

The petitioner is working as Clerk since his promotion w.e.f. 27.05.1993 with the office of Nagar Council, Sunam. By filing the present petition under Section 482 Cr.PC, prayer is for quashing of orders dated 07.12.2015 (Annexure **P-29**) passed by Executive Officer, Nagar Council, Sunam/respondent no.4 whereby sanction for prosecution has been granted in FIR No.27 dated 17.10.2014 for offences punishable under Sections 7, 13(2), 88 P.C. Act registered with Police Station Vigilance Bureau, Patiala (**P-12**).

Further challenge is to: (i) the order dated 04.12.2015 (Annexure P-28) passed by Secretary Local Government, Punjab/respondent no.2 in exercise of powers conferred by Section 237 (ii) of Punjab Municipal Act, 1911, whereby instructions were issued to take police action

on account of corruption charges against the petitioner; (iii) to the order dated 16/20.11.2015 (Annexure P-27) passed by Director Local Government, Punjab/respondent no.3 in exercise of powers under Section 236 of the Punjab Municipal Act, 1911 (read with corrigendum/notification dated 19.7.2005) whereby the resolution number 96 dated 09.09.2015 passed by the Nagar Council, Sunam declining the request for sanction for prosecution of the petitioner, was set aside; (iv) to the order dated 10.09.2015 (Annexure P-25) passed by Director-respondent no.3 directing Executive Officer, Municipal Council Sunam-respondent no.4 to take up the agenda afresh regarding the case of grant of sanction for prosecution of the petitioner and lastly to the order dated 13.4.2015/20.05.2015 (Annexure P-17) passed by Director-respondent no.3 whereby the resolution no.16 dated 20.03.2015 was cancelled for the on the ground that no reasons for non granting the approval have been mentioned and further prayer is also for quashing of the aforesaid FIR No.27 dated 17.10.2014 for offences punishable under Sections 7, 13(2), 88 P.C. Act registered with Police Station Vigilance Bureau, Patiala (P-12).

It is averred that the petitioner was a victim of conspiracy of the Executive Officer, Nagar Council, Sunam/respondent no.4 whereby he was framed in a bribe case resulting into lodging of aforesaid FIR No.27 dated 17.10.2014 by the Vigilance Bureau. The inimical attitude of respondent no.4 is on account of the transfer order of the petitioner issued by him having been stayed by the Court resulting into its reversal as also the petitioner being the President of the Municipal Worker Union, District Sangrur. Thus a false case registered against the petitioner.

It is further averred that the competent authority for taking any disciplinary action is the Municipal Council, Sunam who as per resolution no.16 dated 20.03.2015 (**P-16**) had rejected the request of the Vigilance bureau for grant of sanction for prosecuting the petitioner. Even on reconsideration pursuant to the order dated 13.04.2015/20.05.2015 (**P-17**) and upon recording of statements passed another resolution no.96 dated 9.9.2015 (**P-21**) rejecting the request for grant of sanction. However the Director/Government has illegally set aside the resolution and proceeded to direct the grant of sanction for prosecution.

Learned Counsel for the petitioner has argued that the competent authority for the purpose of granting prosecution sanction is the Nagar Council, Sunam being the appointing authority and it having rejected the request twice by passing resolution nos.16 & 96, the impugned orders passed by the Director/Government as also P-29 by the Nagar Council, Sunam granting sanction without their being any fresh evidence are liable to be quashed being illegal and without jurisdiction as it is well settled that the competent authority cannot review its order of rejection of prosecution sanction without their being any new and fresh material. In support of his contention, learned Counsel for the petitioner has placed reliance upon **Mohan Singh & Anr. Vs. State of Punjab & Anr. 2013(2) RCR (Criminal) 959** and **Ram Singh Dhall Vs. State of Punjab & Anr. 2015(3) RCR (Criminal) 667.**

After hearing learned Counsel for the petitioner and going through the impugned orders, this Court finds that the present petition is devoid of any merit and according same is liable to be dismissed.

It is necessary to examine the sequence of events to find out the status and validity of the previous orders whereby the alleged sanction was declined. After registration of the FIR for being apprehended accepting a bribe, the investigation was carried out and thereafter, the statutory sanction for prosecution was applied by the Vigilance Department on 13.03.2015. Through resolution no.14 dated 18.03.2015, it was resolved that the Executive Officer was authorised to examine and take the necessary decision. But on the same day i.e. 18.03.2015 a representation is given by the petitioner and pleaded false implication. Immediately, a meeting was called on 20.03.2015, by the Chairman, Nagar Council, Sunam and a decision vide Resolution no.16 (**P-16**) is taken whereby the necessary sanction for prosecution was rejected. It needs to be noticed that while refusing the sanction for prosecution, the necessary material which needs to be evaluated and examined was not at all looked into and instead the previous service record of the petitioner was examined to save him from prosecution.

This kind of an order (**P-16**) cannot be said to have effectively dealt with the issue of sanction for prosecution, which could be sustained legally and therefore was rightly set aside by the higher authority exercising the powers under Section 236 & 237 of the Punjab Municipal Act, 1911, since it cannot be disputed that all resolutions passed by the Municipal Council, Sunam require approval of the authorities concerned under the Punjab Municipal Act, 1911. It was further ordered that the subject be considered afresh.

Pursuant to the directions, a sub committee was constituted by

the Chairman, Nagar Council, Sunam on 11.06.2015, which proceeded to hold an inquiry. Even the statements were recorded and thereafter, on 22.06.2015 a report was submitted which had exonerated the petitioner. On this basis, the sanction for prosecution was again declined on 09.09.2015 vide Resolution no.96 (**P-21**). Again the procedure adopted for considering the grant or refusal of sanction for prosecution was against the law as no such inquiry is permissible for this purpose and the concerned authority has to examine the material collected by the prosecution during investigation. The inquiry proceeding has preceded the judicial trial and the defence version was also recorded, while forming the opinion to refuse the sanction for prosecution. This is absolutely illegal and is against the instructions of the Government as well, which specifically prohibits such kind of recourse.

Therefore, there is no hesitation to hold that the above refusal of sanction for prosecution on two occasions vide **P-16 & P-21** was not based on the relevant material which ought to have been considered and also the material which has been considered i.e. the previous service record or the defence version, ought not to have been considered. Therefore the refusal of sanction for prosecution on both occasions being based on totally irrelevant material is *nonest* in law Resultantly the petitioner is not entitled to derive any benefit of these orders/resolutions at **P-16 & P-21**, nor the cited case law, wherein facts are concededly distinguishable.

The higher authority, thereafter, had set aside the order/resolution with a direction to the respondent no.4 to reconsider and grant the sanction is justified.

In view of the above, present petition being without merit is

hereby dismissed.

(JASWANT SINGH)
JUDGE

March 2nd, 2016
Vinay