

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10793 of 2016
Date of decision: 10.08.2016

Kulwinder Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Nakul Sharma, Advocate for
Mr. S.S. Salar, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant writ petition is directed against the order dated 30.03.2016 (Annexure P-4) passed by the Secretary to Govt. of Punjab, Department of Rural Development and Panchayats, Chandigarh, whereby appeal filed by respondent No.3-complainant, against the order of reinstatement of petitioner as Sarpanch, was allowed, setting aside the order dated 23.07.2015 passed by the Director, Department of Rural Development and Panchayats, Punjab.

Learned counsel for the petitioner submits that mere involvement of the petitioner in criminal case would not be a ground for his suspension from the post of Sarpanch. He further submits that petitioner was initially placed under suspension vide order dated 12/25.02.2015 passed by the Director, Department of Rural Development and Panchayats-respondent No.2. Thereafter, respondent No.2 reviewed his order dated 12/25.02.2015 vide order dated 23.07.2015

(Annexure P-2) and petitioner was reinstated on the post of Sarpanch. Learned counsel for the petitioner would next contend that although respondent No.3 was not having any locus standi to file any appeal against the order dated 23.07.2015 (Annexure P-2), yet the said appeal filed by respondent No.3 was illegally accepted by respondent No.1-Secretary to Govt. of Punjab, Department of Rural Development and Panchayats, Chandigarh vide impugned order dated 30.03.2016 (Annexure P-4). In support of his contentions, learned counsel for the petitioner places reliance on a Full Bench judgment of this Court in **Saktu Ram Vs. State of Haryana and others, 1988 (2) PLR 65**, a Division Bench judgment of Rajasthan High Court in **Mool Chand Vs. State of Rajasthan and others, 2004 (5) WLC 172** and another judgment of this Court in **Gurcharan Singh, Sarpanch Vs. State of Punjab and others, 2011 (2) LAR 535**. He prays for setting aside the impugned order, by allowing the present writ petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the impugned order passed by respondent No.1 has not been found suffering from any patent illegality or perversity, which deserves to be upheld. The writ petition is without any merit and the same is liable to be dismissed, for the following more than one reasons.

When the case came up for hearing on 27.05.2016, following order was passed by this Court: -

“Learned counsel for the petitioner seeks time to verify as to whether the charge against the petitioner in the case FIR No. 37 dated 04.04.2014, registered under Section 420/465/467/468/

471/120-B IPC at Police Station-City SBS Nagar has been framed or not.

Adjourned to 31.05.2016.”

On the next date of hearing i.e. 31.05.2016, learned counsel for the petitioner sought time and the case was adjourned to 26.07.2016. On 26.07.2016, following order was passed, adjourning the case for today: -

“Learned counsel for the petitioner, at the very outset fairly states that in compliance of the order dated 27.5.2016, he has got the instructions to say that the learned court of competent jurisdiction has framed charge against the petitioner in FIR No.37 dated 4.4.2014. However, he seeks time to get instructions, as to whether regular departmental enquiry ordered against the petitioner has been concluded or not.

On his request, adjourned to 10.8.2016.”

A bare reading of the abovesaid order dated 26.07.2016 passed by this Court would show that it is no more in dispute that learned Court of competent jurisdiction has framed charges against the petitioner in FIR No.37 dated 04.04.2014 for the offences under Sections 420, 465, 468, 471, 120-B of the Indian Penal Code ('IPC' for short). It goes without saying that since the petitioner is facing the criminal offences, including the offence under Section 420 IPC, which amounts to moral turpitude, he would be certainly embarrassed, while performing his duties as Sarpanch.

Further, it is not the mere involvement of the petitioner in a criminal case. The stage has gone further. The investigating agency concluded the investigation and presented the police report before the Court under Section 173

of the Code of Criminal Procedure. Thereafter, the learned Court of competent jurisdiction has already framed charges against the petitioner which would show that sufficient material has been brought on record by the prosecuting agency, so as to frame charges against the petitioner.

So far as the initial order dated 12/25.02.2015 passed by respondent No.2 placing the petitioner under suspension is concerned, copy thereof has not been placed on record by the petitioner, for the reasons best known to him. When respondent No.2 passed the order dated 23.07.2015 (Annexure P-2), charges had already been framed against the petitioner by the learned Court of competent jurisdiction in the abovesaid FIR. However, it seems that said material fact was concealed by the petitioner with a view to mislead the Director, Department of Rural Development and Panchayats, Punjab at the time of passing the order (Annexure P-2), as if charges have not been framed against him.

It is a matter of record that charges were framed by learned Court of competent jurisdiction on 20.04.2015 but this fact has not been recorded by respondent No.2, while passing the order (Annexure P-2). It seems that as the petitioner has not disclosed this material fact in the present writ petition, it was also withheld from the notice of the Director, Department of Rural Development and Panchayats, Punjab-respondent No.2 at the time of passing of the order (Annexure P-2). It is so said because had the said material fact been brought to the notice of the Director, Department of Rural Development and Panchayats, Punjab-respondent No.2, he might not have passed the order of reinstatement (Annexure P-2).

So far as exercise of power of review by the Director, Department of Rural Development and Panchayats, Punjab-respondent No.2 is concerned, The

Punjab Panchayati Raj Act, 1994 ('1994 Act' for short) nowhere grants him said power of review. It is neither pleaded or argued case on behalf of the petitioner that 1994 Act grants any power of review to the Director. In the absence of any such power of review available to respondent No.2, he exceeded his jurisdiction, while passing the order dated 23.07.2015 (Annexure P-2), thereby reviewing his own order dated 12/25.02.2015, thus, it was an order without jurisdiction. In view of this given fact situation, respondent No.1 was well within its jurisdiction to set aside the order dated 23.07.2015 (Annexure P-2) passed by the Director, Department of Rural Development and Panchayats, Punjab-respondent No.2.

A bare reading of the impugned order dated 30.03.2016 (Annexure P-4) would show that respondent No.1 committed no error of law, while passing the impugned order. Further, another material fact, which has been rightly recorded by respondent No.1 in the impugned order was that against the initial order of suspension dated 12/25.02.2015, petitioner has filed his appeal before respondent No.1, which had been dismissed on 29.04.2015. Thus, the initial order of suspension dated 12/25.02.2015, as a matter of fact, had merged in the appellate order dated 29.04.2015 passed by respondent No.1 and thereafter, no order was available with the Director-respondent No.2 to review.

The operative part of the impugned order dated 30.03.2016 passed by respondent No.1, which deserves to be noticed here, reads as under: -

“In view of the above, it is very clear that the Director firstly suspended the Respondent No.2 on 12.02.2015 on account of a FIR registered under section 420/465/468/471, 120-B IPC at Police Station Nawanshahar City. The Respondent No.2 challenged the said order of suspension before this Court and his appeal was

dismissed by this Court on 29.04.2015. These orders were sent to Director vide Endst No.Reader/JDC/SSRDP/27/2015/1401-04, dated 15.05.2015. In spite of the fact that these orders were available in the departmental file, the Respondent No.2 was reinstated by the Director. The Director has absolutely no jurisdiction to review his own orders especially when the appeal against his earlier orders was dismissed by the superior authority. Therefore, the present appeal is accepted and the order dated 23.07.2015 passed by the Director is quashed.”

Coming to the judgments relied upon by learned counsel for the petitioner, there is no dispute about the observations made and law laid down therein. However, on close perusal of the cited judgments, none of them has been found of any help to the petitioner, being distinguishable on facts. It is the settled proposition of law that every case is to be decided on its own peculiar facts and circumstances. Given fact situation of each case is to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

The glaring distinguishable feature in the present case is the framing of charges against the petitioner in the abovesaid FIR, including for an offence under Section 420 IPC. In such a situation, petitioner has no case either on facts or in law. Neither any patent illegality has been pointed out in the impugned order passed by respondent No.1 nor any prejudice has been shown to have been caused to the petitioner by passing the impugned order. Further, once the charges

were framed against the petitioner as far back as on 20.04.2015, as submitted by learned counsel for the petitioner, the criminal trial being faced by the petitioner might have come near the conclusion. It goes without saying that if the petitioner is acquitted by the learned Court of competent jurisdiction from the abovesaid criminal charge against him, the law will take its own course.

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 since the impugned order dated 30.03.2016 (Annexure P-4) passed by the Secretary to Govt. of Punjab, Department of Rural Development and Panchayats, Chandigarh has not been found suffering from any patent illegality or perversity, the same deserves to be upheld. Ordered accordingly. Present writ petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No case for interference has been made out.

With the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

10.08.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No