

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.7678 of 2016 (O & M)
Date of decision: 17.05.2016

Rajinder Singh Benipal

....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE GURMIT RAM

Present: Mr. Ferry Sofat, Advocate for the petitioner.

S.S.SARON,J.

The petition has been filed under Articles 226 and 227 of the Constitution of India for issuing a writ in the nature of mandamus directing the respondents to thoroughly investigate the scam of the Public Works Department (Buildings & Roads) Sirhind Division in a fair and proper manner and take appropriate action against the corrupt officials in view of the Audit Report dated 31.07.2015.

The petition has been filed in the nature of Public Interest. It is submitted by the petitioner in his affidavit attached with the petition that he is a farmer and earns more than Rs.2 lacs per month. A copy of his income tax return has been attached with the petition. It is submitted that no personal interest of the petitioner is involved; besides, no personal motive

or gain or purpose of the petitioner would be served by the present petition. The petitioner, it is stated, is acting bona fide and has filed the writ petition for the enforcement of basic human rights and fundamental rights guaranteed under Article 21 of the Constitution of India.

The primary grievance of the petitioner is that an audit report Annexure P-11 dated 31.07.2015 has been prepared by the Senior Audit Officer which shows various irregularities committed by the Department of Buildings and Roads Construction Division, Sirhind.

It is to be noticed that in case, there is a cognizable offence that is said to have been committed, the proper course for the petitioner is to approach the concerned In Charge of the Police Station for registering a FIR in terms of Section 154 of the Code of Criminal Procedure ('Cr.P.C.' - for short). This Court in exercise of its supervisory writ jurisdiction is normally not to entertain a petition for registration of a FIR; besides, the question whether a criminal offence can be said to have been committed merely on the basis of an audit report would require inquiry and/or investigation and it cannot be said that in view of the audit report pointing out some irregularities, a criminal offence *per se* had been committed. Moreover, it is not shown by the petitioner that he approached the In Charge of the Police Station concerned for registration of a FIR. The petitioner has submitted that he has filed a complaint dated 16.10.2014

(Annexure P-3). The said complaint is addressed to the Hon'ble Prime Minister of India with copies to various others. However, it is not addressed to the In Charge of the concerned Police Station who is the competent authority to register a FIR. Another representation dated 06.05.2015 (Annexure P-6) has been addressed to the Director General of Police (Vigilance), Punjab with copies to the Economic Offences Wing, I.G., Vigilance Bureau, Punjab and Chief Engineer, Quality Control, PWD (B & R), Mohali. However, the same also are not shown to be addressed to the In Charge of the concerned Police Station.

The prayer in the present case is that a fair investigation should be got done in the scam but it is for the petitioner to pursue his remedies in accordance with law.

In Aleque Padamsee and others v. Union of India and others, (2007) 6 SCC 171, the accused in the said case it was alleged had made speeches which were likely to disturb the communal harmony. However, no action was taken by the Police. It was held that when information is laid with the police but no action is taken in that behalf, the complainant can under Section 190 read with Section 200 Cr.P.C. lay a complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided for in Chapter XV Cr.P.C. In case the Magistrate, after recording evidence, finds a prima facie case, instead of issuing process to the accused, he is empowered to

direct the police concerned to investigate into offence under Chapter XII Cr.P.C. and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 Cr.P.C. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and could issue process to the accused. It was noticed that these aspects had been highlighted in All India Institute of Medical Sciences Employees' Union (Reg) v. Union of India and Others (1996) 11 SCC 582. It was specifically observed that a writ petition in such cases is not to be entertained. The above position was highlighted in Gangadhar Janardan Mhatre v. State of Maharashtra, (2004) 7 SCC 768, Minu Kumari and Another v. State of Bihar and Others, (2006) 4 SCC 359 and Hari Singh v. State of U.P., (2006 (5) SCC 733).

In Sakiri Vasu v. State of U.P. and others, 2008 (1) RCR (Criminal) 392 (SC), in a case where the police did not register a case (FIR), it was held that the Magistrate in terms of Section 156 (3) Cr.P.C. has power to order registration of a FIR. It was held that in case the police was not registering a FIR, a petition under Section 482 Cr.P.C. is not to be entertained and the petitioner should be relegated to the Magistrate, who has power to order registration of a FIR under Section 156 (3) Cr.P.C. It was held that the Magistrate has power to direct the police to register FIR; the Magistrate can monitor the investigation; the Magistrate

can order reinvestigation and reopening of investigation on submission of final report by Police if investigation was not done satisfactorily.

Learned counsel for the petitioner has placed reliance on the Vigilance Bureau Manual, Punjab and submits that the enquiries on complaints are to be completed within a period of two months; besides, the investigation of Vigilance Enquiry are to be completed within a period of three months.

The said manual is in the nature of guidelines for the efficient working of the officials/officers of the Vigilance Bureau. It is not shown that these have statutory force so as to be enforceable in a Court of law. It is well-known that every administrative action must have legislative sanction. Therefore, a provision of the manual cannot be invoked and a mandamus cannot be issued on the basis of the same unless these have legislative sanction.

The petitioner has further submitted that he would not be able to pursue the remedy before the Magistrate as he may not have locus standi.

In this regard, it may be noticed that the Supreme Court in A.R.Antulay v. R.S. Nayak and another, AIR 1984 Supreme Court 718 held that it is well recognized principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The locus standi of the complaint is a

concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complaint, by necessary implication the general principle gets excluded by such statutory provision. Therefore, the said stand of the learned Counsel for the petitioner is also without basis.

In the circumstances, there is no merit in the petition and the same is accordingly dismissed. However, the petitioner may avail his other remedies in accordance with the law. It is made clear that any observations made herein are for the purpose of disposing the present petition and shall not be treated as an expression of opinion on the merits of the case. In case the petitioner seeks other remedies in accordance with law, the same shall be considered independently and in accordance with law and uninfluenced by any observation made herein.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

17.05.2016
A.Kaundal