

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

CWP No.8652 of 2016
Date of decision:24.5.2016

Pawan Kumar and anr.

..... Petitioner

VERSUS

State of Punjab and ors.

..... Respondents

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

Present: **Mr. Charanpreet Singh, Advocate**
for the petitioners.

S.S. SARON, J.

The petitioners Pawan Kumar Jain and Anish Jain have filed the present petition in the nature of public interest for directing Animal Welfare Board of India, the Director, Animal Husbandry Department, Punjab and Deputy Director, Animal Husbandry, Bathinda (respondents No.2 to 4) to take appropriate action against the office-bearers of S.S. Jain Sabha (Regd.), Bathinda and Acharya Jaimal Jain Gaushala @ Jain Gaushala, Bathinda (respondents No.7 and 8) for misutilizing the Government grants/donations. A further prayer has been made for directing the Deputy Commissioner, Bathinda (respondent No.5) to take charge of the management of respondents No.7 and 8 by appointing a Receiver. It is also prayed for issuance of a mandamus for handing over the investigations and enquiry of misappropriation of funds to an independent agency and take action against the guilty persons.

The petitioners it is stated are public spirited persons and are

filing the present petition to high light the misutilization and misappropriation/embezzlement of Government grants to the tune of Rs.31,89,456/- sanctioned for the construction of cow sheds as well as ambulance for the injured cows by the Animal Welfare Board of India (respondent No.2). The petitioner No.1 is a retired Sr. DAO from the B&R Department and consultant in Arbitration Price Escalation and Civil Services matter. On asking of the Court as to what do the words 'DAO' stands for, learned counsel for the petitioners is unable to give any answer although B&R stands for Buildings and Roads. In any case, it is claimed that petitioner No.1 is a donor and a permanent member of the *gaushala*. Petitioner No.2 it is stated is a businessman and running a shop of school bags and stationery on the rear side of 'Dhobi Bazar', Bathinda. He is also a permanent member of the *gaushala* and donates money for the same.

The primary relief that has been claimed by the petitioners is regarding misutilization and misappropriation/embezzlement of the Government funds. The petitioners have not shown any contribution on their part to a public cause. Rule 7 of the Maintainability of Public Interest Litigation Rule, 2010 provides that “*Registry is entitled to verify the antecedents of a person, society or an association who invokes the jurisdiction of the High Court on the cause of public interest.*” Besides, the Supreme Court in **State of Uttaranchal v. Balwant Singh Chauhan and others, (2010) 3 SCC 402**, has *inter alia* issued directions to preserve the sanctity of Public Interest Litigation. The direction at Serial No.3 is to the effect that “*the Courts should prima facie verify the credentials of the petitioner before entertaining a public interest of*

litigation.” No such antecedents, credentials or contribution to public cause has been shown by the petitioners so as to entitle them to invoke the writ jurisdiction of this Court by way of a Public Interest Litigation.

Even otherwise as already noticed, the primary relief that is claimed in the case is for conducting an enquiry into the matter. In case there is mis-utilization and misappropriation/embezzlement of funds, the proper course for the petitioners is to inform the police by approaching the In charge of the concerned police station for registration of a criminal case (FIR). The Hon'ble Supreme Court in **Aleque Padamsee and others v. Union of India and others, 2007 (6) SCC 171** held that in a case where a criminal offence is lodged and no action is being taken by the police, the appropriate remedy is in such a case for the complainant is to lay the complaint before the Magistrate concerned and the Magistrate is required to enquire into the same as provided in Chapter XV of the Code of Criminal Procedure ('CrPC' - for short). A writ petition in such a case it was held would not be maintainable. In **Sakiri Vasu v. State of U.P. and others, 2008 (1) R.C.R. (Criminal) 392**, the Hon'ble Supreme Court held that in case where police is not registering a FIR, the Magistrate has the power under Section 156 (3) Cr.P.C. to order the police to register FIR though such power is not mentioned under Section 156 (3) Cr.P.C. It was held that the Magistrate has wide power to direct the police to register, monitor the investigation and order reinvestigation or reopen the investigation on submission of a final report by the police, if the investigation is not done satisfactorily. It was held that the first remedy to the complainant in case the In charge of the Police station is not registering the FIR is to approach the Superintendent of Police under

Section 154 (3) Cr.P.C. or other police officers referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 Cr.P.C. his grievance still persists then approach the concerned Magistrate under Section 156 (3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover, the complainant has a further remedy of filing a criminal complaint under Section 200 Cr.P.C.

In such circumstances, a writ petition or a petition under Section 482 Cr.P.C. is not to be lightly resorted to when other alternative remedies are available. Therefore, the petitioners, if so advised, may seek their other remedies regarding misutilization and/or misappropriation/ embezzlement of government funds that they allege.

Learned counsel for the petitioners submits that his prayer for appointment of a Receiver may be considered. In this regard, it may be noticed that appointment of a Receiver is in the nature of an interim measure on the maintainability of the petition. In case the petition itself is held to be not maintainable, directions for interim measure for appointment of a Receiver are not to be given.

For the foregoing reasons, there is no merit in the petition and the same is, accordingly, dismissed. However, this would not preclude the petitioners to avail their other alternative remedies in accordance with law.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

24.5.2016
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