

FAO No. 1251 of 2016 (O&M)

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

FAO No. 1251 of 2016 (O&M)

Date of Decision: February 19, 2016

Simarjeet Kaur

...Appellant

Versus

Gurjeet Kaur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Manish Kumar Singla, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

Challenge in this appeal to the order passed by the Presiding Officer, Election Tribunal, (Sub Divisional Magistrate), Sangrur, dated 01.12.2015, whereby, the election petition under Section 76 of the Punjab State Election Commission Act, 1994, for setting aside the election of Gurjeet Kaur, respondent No. 1, for the post of Sarpanch of Gram Panchayat Salempur, Tehsil Malerkotla, Distt. Sangrur, on 03.07.2013, on the grounds of corrupt practices and for passing of the order for re-holding the election of Sarpanch of the Gram Panchayat afresh, has been dismissed.

It is the contention of the learned counsel for the appellant that the statement of respondent No. 3, Dalbir Singh, Sub-

Inspector of Police, CIA Staff, Sirhind, Fatehgarh Sahib, Punjab, the brother-in-law of Gurjeet Kaur (being husband's brother), on 01.12.2014, the date on which he appeared for the first time without waiting for the written statement or framing of the issues, is not sustainable especially when it was recorded at the back of the appellant denying her the opportunity to cross examine. He contends that the said respondent had visited the polling station on the date of polling that is on 03.07.2013, in his official dress and had threatened and instigated the voters to either cast vote in favour of respondent No. 1, Gurjeet Kaur, and not to cast vote in favour of the appellant. He contends that the corrupt practice is writ large and therefore, the findings as recorded by the Tribunal cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant and have gone to the impugned order.

The first contention of the learned counsel for the appellant is that without even there being a written statement on the record, the statement of respondent No. 3, Dalbir Singh, had been recorded by the Tribunal and that too in the absence of the appellant. This contention cannot be accepted in the light of the fact that nothing has been brought on record which would indicate that any objection or subsequent application was filed by the appellant bringing it to the notice of the Tribunal, the said irregularity/illegality.

No effort has been made to recall the said witness to cross-examine. The assertion, thus, of the counsel for the appellant cannot be accepted.

As regards the contention of the counsel for the appellant that respondent No.3, Dalbir Singh, Sub Inspector of Punjab Police, has indulged in corrupt practices by instigating and threatening the voters, the said plea cannot be accepted as it is apparent from DDR No. 4 dated 03.07.2013, according which, he had left the Police Station of CIA Staff, Sirhind, District Fatehgarh Sahib, where he was posted, at 6.30 a.m and after casting his vote, has reported back on duty at 8.40 a.m. Learned counsel for the appellant has admitted that the distance between the two places is about 37 kms. If that be so, there was hardly any time for respondent No. 3 to instigate or threaten the voters as he would have cast his vote at about 8 a.m. when the voting started otherwise it would not have been possible for him to return back and report at 8.40 a.m. at the Police Station Sirhind. The allegations, thus, made against respondent No. 3 has rightly been rejected by the Tribunal.

The findings as recorded by the Tribunal, thus, being in accordance with law and proper appreciation of the evidence on record, do not call for any interference by this Court. The appeal, therefore, stands dismissed.

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In view of the order passed in the main appeal, no order is required to be passed in the present application as the same has been rendered infructuous.

Disposed of as such.

February 19, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**