

FAO No. 7066 of 2015 (O&M)

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

FAO No. 7066 of 2015 (O&M)

Date of Decision: March 01, 2016

Jasvir Singh

...Appellant

Versus

The Presiding Officer & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. N.S. Sodhi, Advocate
for the appellant.

AUGUSTINE GEORGE MASIH, J. (Oral):

CM No.22273-CII of 2015

Prayer in this application is for condonation of delay of 17 days in filing the appeal.

For the reasons mentioned in the application which is supported by the affidavit of the applicant-appellant, the same is allowed. Delay of 17 days in filing the appellant stands condoned.

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Challenge in this appeal is to the order dated 07.08.2015 passed by the Election Tribunal, Ferozepur, whereby, the election petition preferred under Section 76 and 89 of the Punjab State Election Commission Act, 1994, read with Rules 50 to 52 of the Punjab Panchayat Election Rules, 1994, challenging the declaration

of Anoop Singh-respondent No.3 as Sarpanch of the Gram Panchayat village Dhira Patra, Block Ferozepur, District Ferozepur, in the Gram Panchayat elections held on 03.07.2013, stands dismissed.

It is the contention of the learned counsel for the appellant that the only emphasis of the appellant-petitioner was for recount of the votes as there was a difference of only two votes between the appellant and respondent No.3 in the elections. He contends that merely on technical grounds, the election petition has been dismissed. He submits that the intent as has already been stated was for recounting of the votes as the margin between the votes was very less and merely because it has not been mentioned that the eleven votes which have been cancelled, have been so done wrongly would not deny him the benefit of rechecking of the votes to ascertain whether these were rightly or wrongly cancelled. He contends that the impugned order, thus, cannot sustain.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned order as also the pleadings which have been placed on record.

A perusal of the election petition would show that it has not been mentioned in the said election petition that the votes which were cancelled, have been wrongly cancelled. What has been stated

therein is that he had requested the polling staff including respondents No.1 and 2 for recounting and rechecking the votes but the same was flatly refused and his right was denied. In the light of these pleadings, the appellant-petitioner cannot contend that eleven votes which were cancelled were to be rechecked to ascertain the correctness of cancellation when it is pleaded for recounting and rechecking the votes only. It cannot be assumed that the appellant was asserting that the cancelled votes have been wrongly cancelled when there is no pleading to that effect. The appellant-plaintiff, admittedly, had signed the documents at the end of counting of the votes and has not, at that time, filed any complaint/application for recount of the votes. Further, an allegation was made that it had come to his knowledge from some reliable source that the Returning Officer received bribe from respondent No.3, the elected candidate, but no evidence in this regard has been produced nor has the person been named or has been produced before the Tribunal in support of his assertion. Corrupt practices, therefore, as asserted, have also not been proved.

Recount of the votes, cannot be, merely at the asking of a candidate, ordered by the Tribunal unless a ground is specifically pleaded and proved and made out on the basis of the evidence for ordering so. There being no evidence on record, which would substantiate the allegations made in the election petition, the

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dismissal of the election petition by the Tribunal cannot be faulted with.

In view of the above, finding no merit in the present appeal, the same 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.

March 01, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**