

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

**CRL. MISC. No.M-25510 OF 2015 (O&M)
DATE OF DECISION : 11th AUGUST, 2017**

**The Rampura Co-operative Labour and Construction Society Ltd.
Amritsar through Sh. Gurbax Singh Ex-Vice President...**
.... Petitioner

Versus

State of Punjab
.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Rajwant Singh Chahal, Advocate for the petitioner.

Ms. Samina Dhir, D.A.G. Punjab.

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A. B. CHAUDHARI, J. (ORAL)

Heard learned counsel for the rival parties.

Rule.

Heard forthwith with consent of counsel for the parties.

Following is the prayer in this petition:

“That FIR No.10 dated 16.04.2015, under Section 13(1)(d) read with 13(2) of P.C. Act 1998 and under Sections 420, 467, 468, 471, 120-B IPC lodged at Police Station Vigilance Bureau, District Amritsar and further proceedings taken thereon may kindly be quashed.”

In support of the petition learned senior counsel for the petitioner vehemently argued that earlier the petitioner- The Rampura Co-operative Labour and Construction Society Ltd. (in short, ‘the Society’) had filed a civil suit in the year 2002 against the State of Punjab and others for recovery of money for the work done by the society and the said civil suit was decided on 06.10.2009. A decree for recovery of money was passed in favour of the petitioner-Society. In the civil suit the

plea of the petitioner was that though the Society had done the allotted work of the concerned department, the payment was not made. The State of Punjab participated in the said civil suit and after holding a full dressed trial on evidence the trial Court decreed the civil suit in favour of the petitioner-Society. He further submitted that it is not the case of the respondent-State that the suit was decided ex parte against respondents. The decree was passed by the civil Court after considering the oral as well as documentary evidences, in the sum of ₹14,65,409/- along with interest @ 6% per annum from the date of filing the suit till realization. The State of Punjab and others challenged the said decree before the first appellate Court in civil appeal bearing No.207 of 2009 filed under Section 96 CPC. The appeal was dismissed on 03.03.2010 by recording detailed findings. Learned senior counsel for the petitioner-Society therefore, contended that it is thereafter the FIR came to be lodged after number of years in the same subject matter and therefore, the same is clearly the mala fide and the abuse of process of law.

Per contra, the learned counsel for the State of Punjab supported the lodgment of the FIR as element of criminal offence was also involved and therefore no fault can be found out with the FIR lodged by the State of Punjab. He, therefore, prayed for dismissal of the petition.

Heard learned counsel for the rival parties at length and perused the entire record with their assistance.

It is not disputed that in the same subject matter of the present FIR, the petitioner-Society had filed civil suit in which the money decree was passed in favour of the petitioner-Society with certain

findings against the State of Punjab and its department. The decree in the civil Court was challenged before the first appellate Court in first appeal. In my opinion, it will be appropriate to quote the findings of the first appellate court made in para 13, which gives clear details and throws light on the controversy involved. I quote para 13 hereunder:

“13. Keeping in view the arguments advanced by learned Govt. Pleader for the appellant and learned counsel for the respondent, I am of the opinion that appellant department has admitted the fact that work orders have been issued by the officials of the department i.e. Surinderjit Singh Narang. It is also admitted that the completion certificate has been issued by the official of the appellant department regarding the execution of allotted work. The respondent society has proved all the correspondence i.e. Ex. P35, Ex.P36, Ex.P37 and Ex.P38 regarding the alleged work because respondent society was asked to start the work and Executive Engineer had written a letter to the respondent society which has been proved as Ex.P13 to produce the work order and the completion certificate so that the payments should be released in favour of respondent society. The respondent has proved all the documents since the beginning till the completion of work i.e. work orders No.859 dated 6.5.199 (sic) Ex.P1 to Ex.P4, completion certificates Ex.P5 and Ex.P6 issued by the appellant department itself, letter Ex. P7 written by SDO to Executive Engineer regarding the alleged

work and letter Ex. P8 issued by Executive Engineer for directing the concerned official to produce work orders etc. PW2 Sarabjit Singh has been examined by the respondent society, who has proved the copies of resolutions Ex.P12 to Ex.P14, copy of legal (sick) notice Ex.P15. The respondent society had also filed a writ petition before the Hon'ble High Court relating to the work and the copy of the said writ petition has been proved as Ex.P20. Copies of tender forms have been proved as Ex.P21 to Ex.P24. It has also been proved on record that respondent society has given representation again and again before the appellant department and these representations have been proved as Ex.P31 to Ex.P37 but appellant department has miserably failed to prove whether any plea has been taken in reply to these representations that work orders have been procured by respondent society in connivance with the then SDO. It is fully established on record that respondent society has been making demand of payment since the completion of work but these work orders have not been cancelled by the appellant department on the plea of fraud as argued by learned Govt. Pleader during the course of arguments. Learned Govt. Pleader has not been able to show by way of evidence how the work orders and completion certificates can be procured by respondent society when all these documents admittedly are required to be issued by appellant

department itself. Entries in the measurement book are also required to be (sick) made by the appellant department itself. It is admitted that work orders, completion certificates etc. have been issued by the officials of the department but the only contention taken by learned Govt. Pleader is that all these documents are result of fraud and appellant department has not been able to prove whether these work orders were ever cancelled being the result of fraud or whether any action has been taken by appellant department against the concerned officials regarding the alleged fraud. If the appellant department has produced all the correspondence from its custody and all these documents have been kept in record of the appellant department itself, then appellant has not been able to prove how these documents can be deemed as a result of fraud alleged to be committed by respondent society when the said record is to be maintained by the officials of the appellant department. The learned lower Court has rightly relied upon the documents produced and proved by appellant society regarding the allotment of works and regarding the execution of work on the spot. It is established that officials of the appellant department had visited the spot for inspection and the said officials have claimed TA and DA from their department time and again from which it is abundantly proved that works were being executed on the spot. DW1 Pushpkaran Chander Sharma

examined by the appellant department has admitted in his cross-examination that... “it is correct that work order book always remained in the custody of department from where the work order is usually issued to agencies after the allotment of works. It is further correct that it is responsibility of our department to issue the work order to the executing agency. It is further correct that measurement book also remain in the custody of our department. It is correct that it is the sole responsibility of the concerned J.E. to record entries of executed work in the measurement book. We only got the signatures of the agency or work order containing conditions of work, however, we never direct the agency to verify the legality of the work order.”... The said witness has admitted the fact that work orders Ex.P1 to Ex.P4 have not been cancelled by the department till today. It has also been admitted by the said witness that these work orders are still existing in the official record but payments have not been released. He has also admitted the fact that tenders alleged to be proved by respondent society were regarding repairing the earthen Bund for the safety of the village. DW1 Pushpkaran Chander Sharma has also admitted that completion certificate has been issued by the officials of the appellant department. The said witness has also admitted the other correspondence alleged to be between appellant department and respondent society and further between Executive

Engineer and the said SDO for producing the record etc. In these circumstances, the appellant department has not been able to show how the respondent society should be denied the payment regarding the works alleged to be executed by it.”

It is clear from the reading of the above findings in para 13 that the appellate Court while considering has recorded finding on evidence oral as well as documentary, that was recorded by the civil Court. The aforesaid finding is self speaking about the default on the part of the respondent in not making payment for the work done and raising lame defence.

The learned Senior counsel for the petitioner contended that the respondent-State of Punjab and its department have filed a second appeal in this court vide RSA No.2387 of 2010 (O&M) and the same is pending in this Court. The appeal stands admitted but this court had made a reasoned interim order refusing the stay of the money decree. That order of refusal of stay was put to challenge in SLP in the Apex Court, which was dismissed. The factual scenario as stated above thus clearly shows to my mind that the entire dispute between the parties was of civil nature and in fact the civil litigation was pending before the trial Court and now this court, the respondents having lost in two courts below. It appears that the FIR in question was lodged on 16.04.2015 i.e. after filing of the second appeal and dismissal of prayer for stay and SLP also by the Apex Court. The FIR seems to have been lodged clearly after thought and seems to have been lodged by the officers of the respondent-State in order to save their skin and to put up a defence that the decree passed by the civil court was because of the fault of the petitioner-society

and some of its officers. That appears to have been obviously done with a view to tell the government that the actions, civil as well as criminal, have been pending in the court. It is in that context a civil dispute, in which the respondent-State has suffered a decree, was sought to be converted in criminal litigation by lodging the FIR in question. That is a clear abuse of process of law. After all it cannot be forgotten that the petitioner-Society is not an individual but a cooperative labour and construction society, working for the welfare of unorganized class under the Society.

In that view of the matter, I think that the FIR in question must be quashed. The petitioner would be entitled to suitable costs in the sum of ₹5000/- from the respondent-State of Punjab.

In the result I make the following order:

ORDER

- (i) Rule is made absolute in terms of the prayer made in the petition reproduced hereinabove.
- (ii) The respondent-State shall pay a sum of ₹5,000/- as costs within ten weeks from today.
- (iii) Disposed of accordingly.

11th AUGUST, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: **Yes** *No*

Whether Reportable: **Yes** *No*