

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

238

CRM-M-859 of 2012 (O&M)

Decided on : 16.11.2017

Sarabjit Singh

... Petitioner

Versus

State of Punjab and another

.. Respondents

CORAM : HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present : Mr.Arun Takhi, Advocate
for the petitioner.
Mr.APS Gill, DAG, Punjab.

Arvind Singh Sangwan, J. (Oral)

Prayer in this petition is for quashing of FIR No.101 dated 17.09.2010 (Annexure P/15), registered under Section 409 IPC at Police Station Ghuman, District Batala and all the subsequent proceedings arising therefrom.

Before referring to impugned FIR, certain facts leading to registration of same are noticed as under:-

The petitioner was elected as Sarpanch in the year 2003 and he remained as such till 2008. During the tenure of his office as a Sarpanch, a complaint dated 12.09.2008 was filed (Annexure P-1) levelling allegation regarding irregularity of Panchayat funds. It is further submitted that the said complaint was inquired into by the Deputy Superintendent of Police, Qadian, District Batala and recommended to the SSP that the complaint is without any basis and it should be filed on the basis of the inquiry report dated 25.10.2008 (Annexure P/2). It is further submitted that thereafter, the District Development and Panchayat

Officer, Gurdaspur vide letter dated 24.10.2008 also marked an inquiry to the Block Development and Panchayat Officer, Sri Hargobindpur and the same was got conducted through Junior Engineer of the Block and as per the report dated 19.12.2008 submitted by the Junior Engineer (Annexure P/3), it was found that the Panchayat's record regarding removal of bricks is not properly maintained. Thereafter, another inquiry was conducted by the office of Director Rural Development and Panchayat, Punjab, Chandigarh and as per the inquiry conducted by the SDO, Panchayati Raj, Batala-cum-Inquiry Officer vide report dated 21.1.2009, an amount of Rs.213,547/- was shown recoverable from the petitioner. Another inquiry dated 10.7.2009 (Annexure P/4) was also conducted by the Sub Divisional Officer. As per this inquiry, again certain amount was shown outstanding towards the petitioner.

Learned counsel for the petitioner further submits that thereafter, a letter dated 20.8.2009 was issued by the Block Development and Panchayat Officer directing the petitioner to deposit the aforesaid amount of Rs.2,13,547/-. Thereafter, another show cause notice was issued by the Director, Rural Development and Panchayat Officer, Punjab (Annexure P/7) and the petitioner submitted a reply (Annexure P/8) denying his liability to pay any amount is outstanding towards him.

Thereafter, vide order dated 29.10.2009, the petitioner was suspended from the post of Sarpanch by the Director, Rural Development and Panchayat and the petitioner challenged the same before the appellate authority under the ***Punjab Panchayati Raj Act, 1994*** (hereinafter referred to as the 'Act') and while dismissing the appeal, it was directed

that a regular inquiry may be concluded within a period of three months. Thereafter, the petitioner has challenged the aforesaid two orders dated 29.10.2009 and 30.11.2009 by way of filing a CWP No.3704 of 2010 which was disposed of vide order dated 19.1.2012 directing enquiry officer to conduct fresh enquiry.

Learned counsel for the petitioner submits that in pursuance of the order, the Inquiry Officer-cum-Additional Deputy Commissioner, Development, Gurdaspur vide letter dated 1.1.2013 has submitted a report in which an amount of Rs.2,13,547/- was found recoverable from the petitioner which the petitioner has deposited by way of a demand draft favouring the Gram Panchayat.

In the meantime, the impugned FIR No.101 dated 17.09.2010 was registered against the petitioner with the same set of allegation that despite issuance of the notice to the petitioner in pursuance of the inquiry report dated 20.8.2009, the petitioner has failed to deposit the amount recoverable from him and therefore, he has committed the offence punishable under Section 409 IPC. The present petition has been filed praying for quashing of the aforesaid FIR No.101 dated 17.09.2010.

While issuing notice of motion on 10.1.2012, the trial court was directed to adjourn the case beyond the date given by this Court and the said interim order is continuing till date.

The reply by way of affidavit of DSP (Detective), Police Station Batala has been filed in the Court in which the allegations levelled in the FIR are reiterated and it is submitted that since the petitioner has failed to deposit the amount, the FIR was registered.

Learned counsel for the petitioner has argued that the petitioner was availing his legal right under the Act in contesting the inquiry reports, filing of appeal before the competent authority well within right and the matter was finally decided by this Court vide order dated 19.1.2012 passed in CWP No.15380 of 2010 and till the decision of this writ petition, it cannot be held that the petitioner has committed any offence punishable under Section 409 IPC.

Learned counsel for the petitioner has further submitted that when the show-cause notice was issued to the petitioner directing him to deposit the amount, he has filed a reply and later on, the petitioner was suspended from the post of Sarpanch and simultaneously, the present FIR was got registered on account of non-deposit of the outstanding amount against the petitioner. Learned counsel for the petitioner further submitted that by the time, this FIR was registered on 17.09.2010, the petitioner was not holding the post of Sarpanch and in view of Section 216 of the Act, no member of the Panchayat or Sarpanch can be held liable for any amount payable to the Panchayat, unless, the Block Development and Panchayat Officer, after affording an opportunity of hearing by order in writing assess the amount due towards a panch or Sarpanch, on account of the such loss, waste or misappropriation.

Learned counsel for the petitioner has further submitted that right has been given to a sarpanch or panch to challenge such order passed by the Block Development and Panchayat Officer before the appellate authority i.e. State Govt. and therefore, the registration of the FIR dated 17.09.2010 even prior to decision of the appeal/writ petition

filed by the petitioner challenging such order vide which it was held that the petitioner is liable to pay the aforesaid amount of Rs.1,99,541/-, no criminal liability would arise to register the FIR under Section 409 IPC. It is further submitted that after the decision of CWP No.15380 of 2010 in which a specific direction was given to the Inquiry Officer to take up the enquiry again same from the stage where it was pending, after affording an opportunity to the petitioner, fresh order be passed accordance with law, a fresh order has been passed and therefore, the registration of FIR at initial stage was pre-mature.

Learned counsel for the petitioner submitted that in pursuant to the direction given by this Court, an amount of Rs.1,99,541/-already been deposited in panchayat fund, in pursuance of the order dated 19.09.2017 passed in this case. It is further submitted that on the face of it, the allegations made in the FIR (Annexure P/15) do not constitute an offence punishable under Section 409 IPC as the inquiry report relied upon in the FIR was set aside in terms of the judgment dated 19.1.2012 passed by this Court in CWP No.15380 of 2010.

On the other hand, learned counsel for the State has submitted that the FIR in question has been registered on the direction issued by the Deputy Commissioner, Gurdaspur as the petitioner in pursuance of the show cause notice failed to deposit the amount, therefore, the offence under Section 409 IPC has been made.

After hearing learned counsel for the parties, I find merit in the present petition.

Admittedly, when the inquiry against the petitioner started,

the petitioner was availing his legal remedy to challenge the said report in terms of Section 216 of the Act by way of filing appeal before the competent authority and thereafter, he filed a writ petition in this Court . Order dated 19.1.2012 passed by this Court in CWP No.15380 of 2010, is reproduced as under:-

“By this writ petition, the petitioner has challenged the order dated 30.3.2010 removing him from the post of Panch for the alleged defalcation carried out by him during the previous term of Gram Panchayat when he was the Sarpanch, as also debarring him from contesting elections for five years.

On 3.1.2012, the following order was passed :-

“One of the contentions raised by learned counsel for the petitioner is that in the regular inquiry report Annexure P-11 it has been stated that the petitioner could not produce any material to show that the measurements made by the SDO Panchayati Raj were wrong. Learned counsel states that even till today despite the petitioner having raised this at every forum copy of those measurements was never supplied to him and, therefore, to hold him guilty for not being able to controvert the same is highly illogical. Learned Addl. AG seeks two weeks' time to get the record and answer this question. Adjourned to 18.01.2012.”

In the reply, this allegation has not been controverted. Resultantly, this writ petition is allowed and the impugned order is set aside. However, the inquiry against the petitioner would be taken up from the stage where it was found wanting. Let the petitioner appear before the Inquiry Officer on 21.2.2012. The Inquiry Officer shall supply a copy of the measurements done by the SDO, Panchayati Raj to the petitioner and also give him one opportunity to rebut the same. Thereafter, fresh order will be passed in accordance with law.

January 19, 2012

Sd (AJAY TEWARI)
JUDGE”

Perusal of this order shows that regular inquiry report (Annexure P-11) forming basis of his suspension as well as registration of the FIR, was set aside, and the inquiry officer was directed to pass a fresh order and therefore, the very basis of registration of FIR (Annexure P-15), that is the Inquiry report is no more in existence. Moreover, the petitioner in terms of Section 216 of the Act, after fresh inquiry was

conducted, as per the directions given by this Court vide order dated 19.1.2012, has already deposited the amount of Rs.1,99,541/- therefore, the offence under Section 409 IPC is not made out from the fact of bare reading of the FIR.

For the reasons stated above, this petition is allowed and the FIR No.101 dated 17.09.2010 (Annexure P/15), registered under Section 409 IPC at Police Station Ghuman, District Batala and all the subsequent proceedings arising therefrom are quashed.

[Arvind Singh Sangwan]
Judge

16.11.2017
sd

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No