

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.860 of 2013 (O&M)

Date of decision: October 30, 2017

Jaswant Singh DDPO (retired)

.....Petitioner

Versus

State of Punjab

.....Respondent

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

Present: Mr. P.S. Brar, Advocate for the petitioner.

Mr. Dhruv Dyal, Sr. DAG, Punjab.

A.B. CHAUDHARI, J (Oral)

The present matter has again come up before this Court upon the remand order made by the Apex Court on 22.09.2015.

This Court had decided the revision by a judgment, on the premise that the petitioner had made an order on 05.04.2001 (Annexure P-2) in exercise of the powers and authority vested on him under Section 4(3) of the Punjab Village Common Lands (Regulation) Act, 1961. This Court had also found that the order made by the petitioner i.e. dated 05.04.2001 was challenged before the High Court in a writ petition by Sarpanch. The Division Bench of this Court dismissed the writ petition that was filed by the Sarpanch Roshan Lal in his individual capacity *inter alia* on the ground that he had no *locus standi* as such. This Court also found that apart from that *locus standi*, the Division Bench also dealt with the merits of the matter and therefore according to this Court, the Division Bench had made an adjudication on the issue qua the order dated 05.04.2001 made by the petitioner. This Court also found that review petition was filed which was

also dismissed on 22.02.2002 with a clarification that the Gram Panchayat was entitled to take such steps as are available in law relating to tendering of fresh evidence, if any. It is in that context this Court found the controversy regarding making of the *quasi-judicial* order by the petitioner on 05.04.2001 had come to an end.

It is not in dispute that the FIR was registered against the petitioner i.e FIR No.46 dated 22.11.2004, under Sections 219, 409, 420, 465, 467, 468, 471, 477, 120-B of Indian Penal Code and Section 13(1)(c) (D) read with Section 13 (2) of P.C. Act, 1988.

I have perused the FIR and relevant portion thereof which is reproduced herein below:-

“From reliable sources it has come to notice that Jaswant Singh, D.D.P.O., is connected to Nawanshahar. Vide order dated 05.04.2001, Jaswant Singh DDPO, exercising the powers of Collector sanctioned the land of Village Malikpur, District Nawanshahar measuring 144 acres in favour of 22 persons, on the basis that he said persons were in cultivating possession of the said land for more than 12 years before the implementation of the Act of 1961 (Punjab Village Common Lands Act, 1961). On this ground the order was passed for not dispossessing the said 22 persons whereas as per the Revenue record these people were not in possession of the said land for the last more than 12 years. As such, Jaswant Singh, DDPO in collusion with Roshan Lal, Ex. Sarpanch of Village Malikpur and the 22 appellant has passed the said order by exercising his jurisdiction and misusing his powers. Whereas most of the said 22 people were not the residents of Village Malikpur and the said land was being given on lease

every year by the Panchayat Department. By doing this Jaswant Singh DDPO, Roshan Lal Ex. Sarpanch, Village Malikpur and 22 appellants (who had filed appeals before Jaswant Singh) have committed offence under Sections 219, 409, 420, 465, 467, 468, 471, 477, 120-B IPC and 13(1)(c)(d) r/w 13(2) P.C. Act, 1988”

Perusal of the above part of reproduced FIR shows that the present petitioner according to the Investigation Officer held that 22 persons were in possession of the land for more than 12 years. According to the Investigation, as a matter of fact, that was not so and therefore, the criminal offence was made out.

Learned counsel for the petitioner submits that there is no dispute about the authority vested with the petitioner in making the said order dated 05.04.2001 by virtue of power granted to the petitioner under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961. He further submits that acting as an authority, petitioner passed the order in which reliance was placed on the documents of the Revenue Authority. According to him, even if the said order was legal or illegal, the petitioner cannot be involved into the criminal case by lodging the FIR for making an alleged wrong order.

Judges (Protection) Act, 1985 as applied in a decision of the Single Judge of this Court in the case of Smt. Gayatri Jain vs. State of Punjab, is aptly applicable in this case.

Learned counsel for the petitioner submits that in addition, the protection under Section 3 of the Judges (Protection) Act 1985 would also be available to the petitioner.

Per contra, learned counsel for the complainant and learned

State counsel opposed the petition and submitted that since the Apex Court had made order of remand, it is better that petitioner should face the trial instead of allowing his discharge from the criminal case. According to learned counsel for the complainant out of 22 persons who were identified by the petitioner as eligible, one of the persons, was his wife and therefore the petitioner had a *mala fide* and criminal intention.

Upon hearing learned counsel for the rival parties, I find that while making the order of remand, the Apex Court had also made note of subsequent development which is as under:-

“As a matter of fact, after the disposal of the review petition by the High Court by order dated 22nd February, 2002 the appellant-Panchayat appears to have taken up the matter with the District Development and Panchayat Officer exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 who remanded the matter to the Collector and directed the parties to appear before the Collector on 16th February, 2004. The Commissioner had taken the view that since additional evidence is required to be examined to determine whether the order passed by the respondent was justified, the better course would be to remand the case to the Collector for that purpose. Even order dated 30th April, 2013 passed by the High Court in CWP No.19359 of 2009 directed the parties to appear before the DDPO-cum-Collector, Nawanshahar who was asked to decide the matter within six months. The said direction was later modified by another order dated 22nd August, 2014 whereby the parties were directed to appear before the competent authority.”

Perusal of the said development noted by the Apex Court

shows that the Gram Panchayat has been prosecuting the matter regarding the said order dated 05.04.2001 by leading fresh evidence as was clarified in the order made by this Court. None of the counsel for the parties are aware about the present status of the said proceedings after tendering of fresh evidence by the Gram Panchayat. But then it is not necessary for this Court to await for the same for the reasons given herein after.

It is seen and rather is an admitted position that the petitioner had made an order on 05.04.2001 acting as authority duly authorised by Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961. The said order was challenged before Division Bench of this Court. The Division Bench had then found *inter alia* that the Sarpanch Roshan Lal had no *locus standi*. Secondly, even otherwise there was evidence to show that what was stated in the order was based on some endeavour. In that view of the matter, it is not possible to go behind the said order.

There is an other reason. The protection available to the petitioner is under the Judges (Protection) Act, 1985 and admittedly he was competent authority and made an order accordingly. It would be a matter of challenge before the higher Court or authority under the Revenue law or under the Writ jurisdiction, but then that cannot be the subject matter of FIR. Legal Authority cannot be allowed to put to face the FIR or the prosecution qua the order passed in *quasi-judicial* capacity. Apart from that, I would follow the judgment rendered in a Single Bench judgment of this Court in the case of ***Smt. Gayatri Jain vs. State of Punjab 2005(2) RCR (Criminal) 535***, in the following portion:-

“The petitioner has passed the said order, while discharging her quasi judicial function. Section 45 of the Consolidation Act specifically protects the public

servants for discharging their function and for their action done under the Consolidation Act. No suit or other legal proceeding shall be maintained in respect of the exercise of any power or discretion conferred by this Act. Further, Section 3 of the Judges (Protection) Act, 1985 also gives protection to every person who is empowered by law to give in any legal proceeding a definitive judgment. This Act also provides that no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a judge for any act, thing or word committed, done or spoken by him when, or in the course of , acting or purporting to act in the discharge of his official or judicial duty or function. The petitioner, while discharging her duty as Additional Director Consolidation, in my opinion, was discharging the function as a Judge as defined under Section 2 of the Judges (Protection) Act, 1985. Therefore, lodging of FIR against her is an abuse of the process of law. Allegations against the petitioner is that she has passed the order dated 24.06.1997 contrary to the judgment of the Hon'ble Supreme Court in Gram Panchayat Nurpur's case (supra), wherein it was held by the Hon'ble Apex Court that the Additional Director Consolidation has no authority to go into the question whether the land in dispute is 'Shamlat Deh' or not. This question can only be decided by the Authorities under the provisions of Punjab Village Lands (Regulation) Act, 1961. From the facts, stated in the FIR, it appears that it was not the question before the petitioner for determination as to whether the land in question was Shamlat or not. The question before her was as to whether the Bachat land vests in the Gram Panchayat or it was to be re-distributed amongst the proprietors

as per their share, if the same has not been utilised for any common purpose. In this regard, it has been held by a Division Bench of this Court in Gurjant Singh's case (supra), the Bachat land has to be re-distributed amongst the proprietors and it never vests in the Gram Panchayat. Thus, in my opinion, from the bare reading of the FIR, it is prima facie clear that no offence has been committed by the petitioner and continuation of such FIR against her is an abuse of purpose of law."

Perusal of the above finding recorded by this Court, I have no reason to disagree with the judgment.

Thus, the present petition must succeed. In the result, I make the following order:-

ORDER

1. CRR No.860 of 2013 is allowed.
2. Annexures P-1 order dated 12.02.2013 whereby, charge was ordered to be framed is quashed and consequently the petitioner is discharged in FIR No.46 dated 22.11.2004.

(A.B. CHAUDHARI)
JUDGE

October 30, 2017
anju rani

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