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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2460-2014

Date of decision : 03.05.2017

Yatinder Kumar Chokar and another

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Nain, Advocate
for the petitioners.

Mr. Indresh Goel, Addl. A.G., Haryana.

AMIT RAWAL, J. (ORAL)

The petitioners have approached this Court seeking the following relief:-

"Civil Writ Petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the very initiation of the process of investigation and arrest of the petitioners being totally without jurisdiction, arbitrary, discriminatory and a clear mala fide exercise of power violative of Article 21 of the Constitution of India and in any case in total violation of the order of the Division Bench dated 29.07.2013.

For issuance of a writ in the nature of Mandamus, directing the respondents not to take any action in respect of FIR No.13 dated 14.5.2012, wherein though the petitioners' names were mentioned, but the names of the petitioners do not find mention either in the challan or the charges framed.

With a further prayer for issuance of interim directions

restraining thee respondents from taking any coercive action against the petitioners, who are otherwise nowhere connected with the case and on account of the facts and circumstances mentioned in the writ petition.

With a further prayer to pass any other order or direction as may be deemed fit by this Hon'ble Court, on the facts and circumstances of the present case."

It has been brought to the notice of this Court that in the inquiry report dated 27.04.2012, an FIR was recommended to be registered against the petitioners and ultimately FIR No.13 dated 14.05.2012 under Sections 420, 467, 468, 471, 120 IPC and Section 13(1) (D) of the Prevention of Corruption Act, Police Station SVB, Gurgaon, has been registered. The reference has been given to the order dated 30.11.2010 of this Court (Annexure P-6). The relevant portion of the same reads as under:-

"Affidavit of Dr. Amit Kumar Aggarwal, IAS, Deputy Commissioner, Palwal, filed in Court today is taken on record. Counsel for the State of Haryana states that the Financial Commissioner has taken suo motto notice of the matter and issued notices for cancellation of the mutations. It is further submitted that the entire matter has been referred to the Vigilance Department for investigation and if necessary for prosecuting the guilty persons.

In view of the statement made by the Assistant Advocate General, the Vigilance department is directed to carry out a detailed enquiry, by examining the role of officers, howsoever high or senior, who allowed registration of the sale deeds and ordered sanctioned of mutations, of Shamilat Land. The Vigilance Department shall file a status report on or before the next date of hearing, setting out it preliminary conclusions, in a sealed cover.

Adjourned to 24.12.2010.

A copy of this order be handed over to Assistant Advocate General, Haryana, under signatures of the Special Secretary of this Court."

Learned State Counsel submits that the challan dated 17.11.2012 has been filed against the petitioners and the petitioners are avoiding arrest in view of the averments made in paragraph 12 of the written statement, in essence, the proclamation proceedings under Sections 82 and 83 of the Criminal Procedure Code have been initiated against the petitioners and as well as against Mohammed Issaq and the same are pending before the Court.

In view of the stand taken in the written statement and as well as relief, as indicated above, in my view, the petitioners have an independent remedy to challenge the order of the proclamation proceedings on whatever grounds available and seek the anticipatory bail, if required, and can contest the proceedings in the aforementioned FIR, but not in the manner and mode.

Resultantly, the present writ petition stands disposed of with the aforementioned observations.

03.05.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**