

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

**CWP No.6630 of 2016 (O&M)
Date of decision:08.03.2017**

Ishwar Singh Ex-Sarpanch

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arvind Singh, Advocate
for the petitioner.

Mr. Sukhdeep Parmar, Advocate
for the applicant/respondent No.5.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

AMIT RAWAL J. (Oral)

C.M.No.9091 of 2016

The application is allowed, subject to all just exceptions. The document, Annexure R-5/1 is taken on record.

C.M.No.7914 of 2016

Prayer in the application is for impleadment of complainant as respondent No.5 in the writ petition.

I am of the view that the complainant is not a necessary party as action has already been taken and the State is being represented.

No ground is made out for impleading the complainant as respondent No.5.

Accordingly, the application stands dismissed.

CWP No.6630 of 2016

The petitioner has approached this Court seeking certiorari quashing of the impugned order dated 14.03.2016 (Annexure P-2), issued by respondent No.2-Deputy Commissioner, Panipat directing respondent No.3 – Block Development and Panchayat Officer (BDPO), Block Ishrana, District Panipat to get an FIR registered against the petitioner – Ex-Sarpanch, who had already deposited the disputed amount of ₹12,680/- including interest @ 12% p.a in compliance of the provisions of Section 52 read with Section 175(o) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as “1994 Act”) and also quashing the impugned order dated 30.03.2016 (Annexure P-6), whereby, BDPO directed respondent No.4 -Station House Officer, Police Station Ishrana, District Panipat to register an FIR.

Mr. Arvind Singh, learned counsel appearing on behalf of the petitioner submits that petitioner was elected as a Sarpanch of Gram Panchayat Naultha in the year 2010 and his tenure came to an end in the year 2015. On the basis of complaint regarding the alleged disbursement of old age pension to the LRs of the person, an enquiry against the petitioner was initiated which resulted into decision on 11.12.2013 by the City Magistrate, Panipat, whereby, he was called upon for depositing the aforementioned amount owing to certain arrears in the calculation. He further submits that once the matter has been settled, there was no occasion for the complainant to re-agitate the matter by filing a complaint to the

Lokayukta and the Deputy Commissioner held another enquiry. As a result thereof, it has been ordered that the aforementioned action is to be taken. He also submits that the petitioner cannot be punished twice, once already has been indicted in view of the further enquiry. In support of his contention, relies upon the ratio decidendi culled out by this Court in ***Kewal Singh Ex-Sarpanch vs. State of Punjab and others 2011(1) RCR (Civil) 175*** and ***Ram Kanwar- Ex Sarpanch of Gram Panchayat of village Rai vs. State of Haryana and others 2011(3) RCR (Civil) 436*** regarding the second enquiry on the same cause of action.

Per contra, Mr. Sandeep Singh Mann, learned Senior Deputy Advocate General, Haryana appearing on behalf of the respondents-State submits that the criminal action cannot be initiated with regard to the civil liability. The criminal action has been initiated in the most appropriate manner against the petitioner for the period he remained Sarpanch and therefore, the limitation for having been tried under Sections 406 and 420 of Indian Penal Code being punished is more than three years, would not be barred by law as per the provisions of Section 468 Cr.P.C.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Arvind Singh. The factum of holding of enquiry by the City Magistrate, Panipat is not being disputed or denied, much less payment of aforementioned amount. The second enquiry is dated 14.12.2013. The allegations are identical to that of previous enquiry. Even the petitioner has

not been given opportunity of hearing. If at all, the State was aggrieved of the previous enquiry, it could have assailed the aforesaid finding by availing the remedy under law but not in the manner and mode as indicated above. Such type of practice at the instance of other party without giving opportunity of hearing to the petitioner is without jurisdiction, much less does not conform to the touchstone of reasonableness or equity, fair play. Once the petitioner has already been tried and paid money, no occasion arose to hold second enquiry with regard to same allegations. Such type of complaint, in my view, is bereft of merit instead of blowing the balloon in complete flaw to reach the stage of full bloom. The complaint to the Lok Adalat is not backed by any other affidavit instead, in my view, the complainant has concealed the factum of previous enquiry.

The aforementioned view of mine is reiterated by the judgments of this Court cited supra, wherein, it has been held that once the petitioner has been indicted on the basis of the previous enquiry, cannot be tried again.

For the reasons aforementioned, the impugned orders are wholly erroneous and perverse which are hereby set aside. Resultantly, the writ petition stands allowed.

(AMIT RAWAL)
JUDGE

March 08, 2017
savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No