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

CWP-909-2015

Date of decision : 30.03.2017

Manjit Kaur

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Saurabh Mohanta, DAG, Haryana.

Mr. Vinod S. Bhardwaj, Advocate
for respondent Nos.3 to 6.

Mr. Babbar Bhan, Advocate
for respondent No.7.

AMIT RAWAL, J. (ORAL)

The grievance of the petitioner(s) in the present case is that the impugned order dated 19.09.2014 (Annexure P-3) passed by the Deputy Commissioner, Bhiwani, whereby the Deputy Commissioner had directed the Block Development and Panchayat Officer, Dadri-II/respondent No.5 to assess the amount and recover the same from the petitioner as per the provisions of Section 53 of the Panchayati Raj Act, 1953 (for short 'the Act'), is not only erroneous, but not sustainable.

Mr. Vivek K. Thakur, learned counsel for the petitioner submits that the allegation of the embezzlement made against the petitioner/Ex-Sarpanch was beyond 6 years as his tenure as Sarpanch was for the period of 2005-10 and the notice of the alleged embezzlement/misappropriation is

of the year 2014. In view of the provisions of Section 53 (5) of the Act, no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or mis-application or after the expiry of two years from his ceasing to be a Sarpanch or Panch, as the case may be, whichever is earlier. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Division Bench of this Court rendered in **“Gram Panchayat, Shahpur V/s Financial Commissioner and Principal Secretary to Govt. Haryana, Development and Panchayat Department and others” 2009 (2) RCR (Civil) 599**, thus, urges this Court for setting aside the impugned order, under challenge as there is gross illegality and perversity.

Mr. Saurabh Mohanta, DAG, Haryana submits that the order, under challenge, is perfectly legal and justified and does not call for interference. It is a clear cut finding with regard to the embezzlement/misappropriation against the petitioner and he cannot oust from it. An FIR on the basis of the complaint submitted by respondent No.7, had also registered against the petitioner with regard to the alleged disbursement of old-age pension, thus, urges this Court for dismissal of the present writ petition by upholding the impugned order.

Mr. Vivek K. Thakur, Advocate, in rebuttal, submits that respondent No.7 is a habitual complainant and the factum of the same has been noticed by this Court in one of the order dated 26.02.2015 passed in CWP No.17218 of 2013, whereby the petitioner had approached this Court for seeking a direction against the private respondent(s)/complainant for refraining him to file a perpetual complaint. This Court had observed the imposition of cost of ₹ 50,000/-, but the same ultimately was disposed of.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a merit and force in the submission of Mr. Vivek K. Thakur, for, as per the provisions of the Section 53 (5) of the Act, proceedings for recovery after expiry of six years from the occurrence of the loss, waste or mis-application, can not be proceeded against the Sarpanch or Panch, much less, two years from the date, he ceased to hold the office, whichever is earlier. For the sake of brevity, the provisions of Section 53 (5) of the Act reads as under:

"Notwithstanding anything contained in this Section, no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or mis-application or after the expiry of two years from his ceasing to be a Sarpanch or Panch, as the case may be, whichever is earlier."

Since the petitioner had already ceased to hold the office from more than two years, the proceedings could not have been initiated.

The aforementioned view of mine is reiterated from the judgment cited supra.

Keeping in view the aforementioned facts, the impugned order dated 19.09.2014 (Annexure P-3) is not sustainable in the eyes of law being opaque and arbitrary, much less, vitiated and the same is hereby set aside. Accordingly, the present writ petition is allowed.

30.03.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**