

CM No.6529 of 2016 in/and
RA-CW No.171 of 2016 in
CWP No.3405 of 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM No.6529 of 2016 in/and
RA-CW No.171 of 2016 in
CWP No.3405 of 2016

Date of decision:12.05.2017

Puneet Sood

....Petitioner

v.

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Salil Bali, Advocate
for the applicant/petitioner.

S.S.SARON,J.

The petitioner by way of the present civil writ petition under Articles 226/227 of the Constitution of India seeks appropriate directions in the nature of mandamus for directing the Union of India, through its Secretary, Ministry of Defence, New Delhi and the State of Punjab through Principal Secretary, Home (respondents No.1 and 2) to get investigated the illegal methods and procedures used by various officials especially Satish Arora, SDE, Office of Chief Executive Officer, CBF, Ferozepur Cantt. (respondent No.5) or entrust the enquiry in the matter to any independent agency like Central Bureau of Investigation ('CBI' - for short) so that high scale of misappropriation and embezzlement in the Cantonment Board,

Ferozepur Cantt. (respondent No.3) ('Board' – for short) done by the officials (including respondent No.5) of respondent No.3-Board be brought to surface and guilty brought to book. A further direction has been sought for directing the State of Punjab through the Principal Secretary, Home (respondent No.2) to safeguard the life and liberty of the petitioner including that of his family from the hands of unknown persons, who, it is stated, may come in action and harm the petitioner and his family at the behest of various persons as mentioned in the body of the petition against whom the petitioner is approaching this Court by way of the present petition.

The petitioner states that he is a public spirited person and during the course of his personal litigation with respondent No.3-Board, he came to know of the high scale malpractices, misappropriations and embezzlements being done by using illegal, corrupt and unethical practices by the officials of respondent No.3 – Board especially respondent No.5. Various representations, it is stated, were made by him to the competent authorities but these had remained unattended. Therefore, in the interest of public at large, he is approaching this Court by way of filing the present Public Interest Litigation (PIL).

The petitioner, it is stated, is a partner of M/s Geeta Enterprises and deals in the sales of electrical/electronic goods. It is stated that the petitioner is involved in personal litigation with respondent No.3-Board but the issue which is subject matter of the present petition does not involve any of his personal

interest nor would he be individually benefitted by the outcome of the instant petition. The present petition, it is stated, is motivated for a common cause of the public and there is no self interest or individual motive of the petitioner.

According to the petitioner in the year 2006/2007, certain FIRs were registered against the occupiers of the properties in the Cantonment Board Area at Ferozepur Cantt. regarding selling of land which was in their occupation. Certain accused persons in these FIRs approached this Court for quashing these FIRs. One such petition i.e. Janki Das and others v. State of Punjab CWP No. 13992 of 2010 was treated as a Public Interest Litigation and the enquiry was entrusted to the CBI. The CBI conducted a detailed enquiry and submitted the same before this Court stating that there was no *mens rea* regarding the accused in the said FIR or criminal culpability. The writ petition was, accordingly, disposed of on 23.09.2013 (Annexure P-4).

The petitioner has a bungalow registered in his name in the Cantonment Board Area of Ferozepur Cantt. Sale deed dated 15.5.2008 (Annexure P-5) has been registered in his favour by one Savinder Pal Kaur before the Sub-Registrar, Ferozepur. The petitioner went into litigation with respondent No.3 - Board and disputes arose for passing the site plan for raising constructions. The Cantonment Board, Ferozepur Cantt. through its Chief Executive Engineer and also the Union of India through its Secretary, Ministry of Defence, New Delhi filed a civil suit (Annexure P-6) for injunction against Puneet Sood, petitioner

herein for restraining him for raising unauthorized constructions/ erection or re-erection and encroachment of any kind including constructions of three rooms and other constructions as shown in the site plan attached with the plaint. The petitioner appeared in the suit as a defendant and filed his reply dated 12.2.2015 (Annexure P-7). According to the petitioner, he brought on record the entire truth including the scam so committed by the officials of respondent No.3-Board. An application for ad interim injunction was also filed and the same was decided by the learned Civil Judge (Jr. Div.), Ferozepur vide order dated 09.03.2015 in favour of the respondent No.3-Board. An appeal filed by the petitioner was dismissed by the learned District Judge, Ferozepur vide order dated 03.09.2015. The petitioner then preferred a Civil Revision (CR No.6971 of 2015) which came up for hearing before this Court and notice of motion was issued on 20.10.2015 (Annexure P-8) to respondent No.3 - Board with directions to it to file an affidavit regarding the representations made by the petitioner on 20.08.2013, 07.10.2013 and 25.11.2013.

Apart from the said litigation, the respondent No.3-Board, it is submitted, also filed a civil suit dated 17.07.2015 (Annexure P-9) seeking setting aside the sale deed dated 15.05.2008 (Annexure P5) executed by Savinder Pal Kaur in favour of the petitioner. The said civil suit (Annexure P-9) according to the petitioner, is signed by Vijay Bhaskar who it is stated was not present and was not holding the post of CEO of Cantonment Board, Ferozepur on 17.7.2015. To support his said

contention, the petitioner is placing on record copy of RTI application dated 18.08.2015 (Annexure P-10) made to the Central Public Information Officer (CPIO) and the reply dated 26.11.2015 (Annexure P-11) given by the Cantonment Board, Ferozepur mentioning that the date of reliving Sh. Vijay Bhaskar, CEO, Ferozepur is 01.07.2015, the date of joining of Sh. Purshotam Lal as CEO is 01.07.2015 and the date of joining of Sh. Ompal Singh, CEO is 22.07.2015. Therefore, according to the petitioner, it can be seen that the officials of the Cantonment Board have been inimical towards him.

It is in this background that the petitioner has highlighted the scam being committed by the officials of the Cantonment Board, Ferozepur (respondent No.3) for which he seeks an enquiry to be conducted by the CBI.

It is to be noticed that the petitioner has highlighted the various acts of illegalities being committed by the officials of Cantonment Board, Ferozepur (respondent No.3) in para 13 of his petition. However, the petition filed by the petitioner was dismissed as withdrawn on 19.02.2016 with the following order:-

“Learned counsel prays that the petitioner may be permitted to withdraw this petition with liberty to pursue his alternative remedy in accordance with law.

Dismissed as withdrawn with the aforesaid liberty.”

After the petition has been dismissed as withdrawn on

19.02.2016, review application i.e. RA-CW No.171 of 2016 has been filed in terms of Order 47 Rule 1 of the Code of Civil Procedure ('CPC' - for short) seeking review of the above order dated 19.02.2016. Along with application for review, CM No.6529 of 2016 has been filed under Section 5 of the Limitation Act seeking condonation of 15 days in filing the review application.

Learned counsel appearing for the review applicant/petitioner submits that subsequent events have occurred and a reference has been made to a news item dated 14.03.2016 (Annexure A-2) under the heading "Ferozepur Cantt. Board Office Raided". It is mentioned that more than 12 CBI Officials raided the Cantonment Board Office situated on Jhoke Road. Sources said the CBI Officials seized the entire computer data and files pertaining to the ongoing development works including the laying of sewerage in the Cantonment area. They said there were complaints regarding misappropriation of funds in some works following which the CBI was told to probe. The officials sealed the entry and exit points and did not allow any Board official to move out of their work place. None of the CBI or Board officials spoke on the matter. The raid was on at the time of filing of the report. Therefore, it is submitted that the various illegal activities that are going on in the Cantonment Board need to be probed.

The petitioner in view of the said news report (Annexure A-2) seeks a detailed enquiry to be conducted.

It is to be noticed that in case a cognizable offence is committed, the proper course is to get an FIR registered so that

the mater can be investigated. The petitioner has admittedly not approached the SHO of the concerned Police Station or the CBI for registration of an FIR, which is the requirement in terms of Section 154 of the Code of Criminal Procedure (Cr.P.C. - for short). In fact for effective investigation of a case in respect of a cognizable offence, an FIR is to be lodged which is registered with the In charge of the concerned Police Station.

The Supreme Court in **Sakiri Vasu v. State of U.P. and others**, 2008 (1) RCR (Crl.) 392 has said that in case the police is not registering an FIR, the first remedy of the complainant is to approach the Superintendent of Police under Section 154 (3) CrPC or other police officer referred to in Section 36 CrPC. If despite approaching the Superintendent of Police or the other police officers referred to in Section 36 CrPC, the grievance of the complainant still persists, then he can approach a Magistrate under Section 156 (3) CrPC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 CrPC. Moreover, the complainant has a further remedy of filing a criminal complaint under Section 200 CrPC.

Learned counsel for the petitioner submits that the petitioner has submitted various complaints to the CBI authorities, however, there has been inaction. It is to be noticed that it is not shown by the petitioner as to whether any complaint has been submitted to the concerned Officer In charge of the Police Station for the purpose of registering an FIR or whether he has approached the Superintendent of Police or the

Superintendent, CBI or the Magistrate of the area under Section 156 (3) CrPC. Be that as it may, in case the police did not register a case (FIR), the Magistrate can order the Police for registration of an FIR in exercise of power under Section 156 (3) Cr.P.C. in case a cognizable offence is made out.

Therefore, the petitioner in the first instance is liable to approach the concerned Officer In charge of the Police Station of the jurisdiction where the Cantonment Board falls or the CBI, as the case may be, for registration of a case (FIR) and in case the same is not registered then approach the Superintendent of Police under Section 154 (3) Cr.P.C. or other Police Officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 grievance still persists, then he can approach a Magistrate under Section 156 (3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Besides, the petitioner has a further remedy of filing a criminal complaint under Section 200 Cr.P.C.

Therefore, in the circumstances, the fact that the petitioner has withdrawn his writ petition on 19.02.2016 for availing other remedy was the correct position to follow the procedure as prescribed.

In view of the aforesaid, learned counsel for the petitioner submits that he may be allowed to withdraw the review application without prejudice to his rights to avail the alternative remedy in accordance with law.

Dismissed as withdrawn with the aforesaid liberty.

It is made clear that nothing stated herein shall be taken as an expression of opinion one way or the other on the merits of the case.

Since the review application has been dismissed as withdrawn, the question of delay in filing the review application is only academic and the same is also dismissed.

(S.S. SARON)
JUDGE

(SHEKHER DHAWAN)
JUDGE

12.05.2017
A.Kaundal

Note:

1. Whether the order is speaking/reasoned: Yes
2. Whether the order is reportable : No