

CWP No.27220 of 2017

[1]

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

**CWP No.27220 of 2017
Date of decision:18.01.2018**

Ashok Kumar Sabbarwal ...Petitioner

Versus

State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.S.Nara, Advocate,
for the petitioner.

Rakesh Kumar Jain, J.

The petitioner has challenged the order dated 06.11.2017 passed by the Lokayukta, Haryana, by which recommendations have been made to the Competent Authority to take stern departmental as well as criminal action against the petitioner.

In brief, the petitioner has retired from the post of Deputy Superintendent of Police in the State of Haryana on 30.04.2014. While serving as the Deputy Superintendent of Police, he was the Investigating Officer in FIR No.370 dated 18.12.2011 registered at Police Station Farakpur, District Yamunanagar. He recommended cancellation of the said FIR. The complainant of the said FIR made a complaint on 22.05.2013 to the Lokayukta and notice in the complaint was issued to the petitioner, asking him to file the reply. The Registrar in the office of the Lokayukta made the investigations and submitted his report on 22.01.2015. The relevant text of his report dated 22.01.2015 read as under:-

“Affidavit in support of transcript of conversation of CD is

filed by the complainant Respondent Mr. Sabharwal has also filed reply.

Heard.

This complaint revolves around the death of 17-1/2 years boy who has allegedly committed suicide by burning due to harassment given by school teacher, Principal and Director. The complainant who is mother of that boy has filed the present complaint on 22.5.2013 interalia alleging that she lodged the report on 9.12.2012 but FIR was registered on 18.12.2012. That all these respondents No. 2 to 4 have colluded with the school authorities and neither proceeded into the matter properly nor are arresting the accused. It is further alleged that one of the accused namely Ms. Neelam Dhiman is told to be in the relation of Respondent No.1 Mr. Phool Kumar, DSP, H.Q., Yamuna Nagar.

After the complaint was received, the matter was sent to the Director General Police to submit the report. DGP has submitted the report on the basis of report sent to him by the Additional Director General of Police, Crime, Haryana. In view of this report the allegations were not found to be correct by these Respondents No. 2 to 4. The complainant approached the Hon'ble High Court under Section 482 Cr.P.C. The High Court has directed investigation to be conducted by a senior officer of Crime Branch. Accordingly Dr. Rajshri Singh, IPS, SSP, Crime Branch, Gurgaon has conducted the investigation. As per investigation, Rakesh Makol, Rajbir Pundir, Neelam Dhiman of school authorities have been found to be involved. They have been arrested as per law and challan has been filed in the court. The complainant filed objections that accused respondents have not acted diligently and have allowed the accused to be enlarged on anticipatory bail.

After hearing the complainant/ notice was given to Respondent No. 2 to 4 so as to file their reply. They appeared and filed their reply justifying their actions of not arresting the accused. In the meanwhile complainant filed an application accompanied with certain transcript of conversation with DSP Respondent No. 2 Mr. Sabharwal. Perusal of same revealed that Mr. Sabharwal was talking to the complainant not only one day but even on the 2nd day and that too number of times. These conversations were also given to the SSP to submit report. The SSP, Yamuna Nagar has

submitted report that respondent Mr. Sabharwal was ailing and he has consumed some tablet creating imbalance in his mind and that is why he has telephoned the complainant by mistake. He has told that there was Mrs. Sharma who was housemate and he was thinking that he was talking to her. The explanation was not found to be satisfactory and Mr. Sabharwal was required to file reply in that behalf. He has filed reply taking same plea and also the plea that he was taking the medicine 'Trika' 2.5 mg. And that is why he was under its effect. He has produced photocopy of prescription. The perusal of same reveals that Trika was prescribed to him on 20.7.2014 and 27.4.2014. However, on 30.7.2014 and 2.8.2014 no such medicine was prescribed by the doctor. He submits that he was already in possession of the medicine and has taken it.

I have gone through the gist of conversation between the complainant and Mr. Sabharwal. The perusal of same reveals that he was definitely under influence of some intoxicant. Now whether it was medicine or some liquor or anything else, it cannot be said. The relevant contents of the conversation reveals that Mr. Sabharwal, is blaming Mr. Jain, SSP to Yamuna Nagar, who was putting pressure upon him not to arrest the accused. He has also revealed that one of the accused was related to Mr. O.P. Singh, IG, HQ. He has also required the complainant to help him. She having told that she has already spend Rs.10.00 lacs., he replied that he would pay Rs.10.00 lacs to her.

Although, she has also attached transcript of conversation held by her with Dr. Rajshri Singh, IPS, who has subsequently challaned the accused, yet she being not party cannot be taken note of. The cursory look of that conversation reveals that as if, someone was also putting pressure upon her during that investigation.

During hearing of the case, it revealed that after registration of the case on 18.12.2012 the case was transferred by Joginder Singh, ASI to Prithavi Singh, ASI on 4.2.2012. Shri Joginder Singh states that during that period he remained on 15 days leave due to marriage of his child. He has recorded the statement of the witnesses. Shri Prithavi Singh, SI has recorded the statement of a neighbour who has put blame upon the complainant for the suicide by her son. Subsequently, Mr. Sabharwal has conducted

investigation and has obtained affidavit of these girl students who have earlier deposed in favour of the complainant. In the conversation the complainant has stated that you have obtained the statement of the girls forcibly and this fact was obliquely admitted by Mr. Sabharwal.

Keeping all these facts in view, I find that there was certainly some pressure upon all the three respondents. No.2 to 4. That pressure was from higher officers and under that guise these respondents might have also taken some illegal gratification. The respondents have tried to justify their investigation on the ground that in the dying declaration, blame has been put not only upon the school authorities for taking fine and humiliating the victim but also reflect that the conduct of complainant was not good with the child and he was not even in speaking terms with the complainant. It also revealed from dying declaration that he was having some love affair with a girl. Since Mr. Joginder Singh has remained as Investigating Officer for limited period much cannot be said about him. However, respondent Prithavi Singh, SI and Phool Kumar, DSP are liable for misconduct. They have forcibly recorded the statement/affidavit of girl students, who have supported the case of the complainant and their investigation had definitely been found to be false, by which they have sent for cancellation of the case. Because lateron, an office of SSP Rank has found the involvement of three persons of the school administration to be responsible. In these circumstances, thus, the file is sent to the Hon'ble Lokayukta for final consideration and for appropriate recommendations as His Lordship deems fit.”

After receipt of the report, an order was passed by the Lokayukta on 02.11.2015:-

“After receipt of report of preliminary enquiry report from the learned Registrar, the complainant has raised some important and relevant issues in the matter. A copy of the judgment passed by the Court of Sessions has already been placed on the file. Now, she wants to file written arguments in support of her assertion alongwith some documents.

In the interest of justice, she is allowed to file written

arguments together with documentary evidence, if any, on or before the next date of hearing with advance copy thereof to Shri Phool Kumar, Deputy Superintendent of Police, Shri Ashok Kumar Sabharwal, Deputy Superintendent (Retd.), Sub Inspector Joginder Singh and ASI Prithvi Singh, so that the matter could be disposed of finally on the next date of hearing.

So, adjourned to 3rd February, 2016 at 10.30 A.M.”

Since it was a case pertaining to the alleged suicide of one Ranjan Sharma, son of the complainant, who was a student of 12th class and the allegation against the investigating agency was that the investigation has not been done in a fair manner, therefore, the Lokayukta, after thoroughly dealing with the matter in hand, concluded the laxity in the investigation and had also referred to the finding recorded by the Sessions Court, which read as under:-

“It stands established that all efforts were being made by Prithvi Singh ASI and Ashok Kumar Sabharwal, Deputy Superintendent of Police (Traffic), Yamuna Nagar, both investigating officers of the case to help the accused persons and many flaws were left in the investigation of the case resulting into filing of cancellation report. Later on, it has come on the record that the statements of material witnesses were not recorded by Prithvi Singh ASI. A letter along with copy of this judgment be sent to the Director General of Police, Haryana, Panchkula to look into the matter and take appropriate action under intimation to this Court.”

The ultimate finding of the Lokayukta would also read as under:-

“Considering the overall circumstances of the case and material brought on the record, there is no doubt in my mind that the respondents ASI Joginder Singh (now retired), ASI Prithvi Singh and Shri Ashok Kumar Sabharwal (now retired) have deliberately not conducted fair investigation in the matter in order to save the accused persons obviously for some extraneous considerations. The steps taken by the Director General of Police pursuant to the observations made by the Sessions Judge are also

not sufficient in as much as if such Investigating Officers will conduct deliberate improper investigation so as to save the influential persons certainly the police force will further lose faith in the eyes of public at large. It is not matter whether after fair investigation the accused were convicted or not, the requirement of an Investigating Officer is that he should conduct the investigation honestly, promptly, diligently and without fear and favour to any party and also without getting pressurized by any one including the higher officials. This has not been done in the instant case and, therefore, the respondents are certainly liable for appropriate punishment.

For the foregoing, it is recommended to the Competent Authority to initiate stern departmental action against ASI Joginder Singh (now retired), ASI Prithvi Singh and to initiate stern departmental as well as criminal action against DSP Ashok Kumar Sabharwal (now retired). Action taken report in that behalf be sent to this Authority of Lokayukta within three months as required under Section 17(2) of the Haryana Lokayukta Act, 2002.

With the above recommendations, this complaint stands disposed of.

All concerned be informed accordingly.”

Counsel for the petitioner has submitted that already a departmental enquiry has been going on, therefore, there was no reason for the Lokayukta to order for departmental and criminal action against the petitioner. It is further submitted that the Lokayukta has failed to conclude the enquiry within a period of one year, as mandated under the Haryana Lokayukta Act, 2002.

After hearing learned counsel for the petitioner and taking into consideration the entire facts and circumstances of this case especially the observations made by the Sessions Court against the petitioner that he had tried to help the accused persons by leaving many flaws in the investigation of the case resulting into filing of the cancellation report and that the Lokayukta has

also took lot of pains in appreciating the facts of this case minutely while coming to the conclusion that the investigation was not fair, I do not find any reason to interfere in the present petition because the Lokayukta has merely recommended the stern departmental action against the petitioner who is already facing the departmental action as it would not fall within the definition of double jeopardy as the Lokayukta is only adding his recommendations on the basis of the investigation carried out by him.

I also do not find any merit in the argument that the enquiry carried out by the Lokayukta would be hit by Section 12(2) of the Act because it relates to the preliminary inquiry which has been conducted by the Registrar of the office of the Lokayukta within the time prescribed.

No other point has been raised.

In view of the above, I do not find any merit in the present petition and hence, the same is hereby dismissed, though without any order as to costs.

January 18, 2018
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No