

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

CWP-9790-2019

Date of decision: 11.4.2019

Gurdial Singh and another

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr.RS Mamli, Advocate for the petitioner

Mr.Vikrant Pamboo, DAG, Haryana

JITENDRA CHAUHAN, J.

The petitioners seek quashing the order dated 27.8.2018 (Annexure P-4) passed by learned Deputy Commissioner, Yamuna Nagar vide which the complaint of the petitioners for taking action against respondent No.5 was dismissed and the order dated 4.12.2018 (Annexure P-6) passed by Principal Secretary to Govt. of Haryana, whereby the appeal filed by petitioner No.1 has been dismissed.

Learned counsel for the petitioner refers to Section 51 of the Haryana Panchayati Raj Act, 1994 to contend that as per the enquiry conducted by the Block Development and Panchayat Officer, Chhachhrauli, it was found that respondent N0.5 Jogindero Devi, Sarpanch, Gram Panchayat Munda Khera, Tehsil Chhchhrauli, District Yamunangar had embezzled the funds of gram panchayat. It is further asserted that on the complaint filed by the petitioner in the Court of learned Judicial Magistrate,

1st Class, Jagadhri, an FIR No.69 dated 15.6.2018 stands registered against respondent No.5, under Sections 420, 409, 465, 467, 468 & 471 IPC at Police Station Sadar Jagadhri, despite that no action has been initiated against respondent No.5.

On the other hand, learned counsel for the State submits that charges have not been framed against respondent No.5 as yet.

Heard.

The complaint filed by the petitioner before the Deputy Commissioner, Yamuna Nagar for termination of respondent No.5 on the ground of pendency of criminal case against her, was filed vide order dated 27.8.2018 (Annexure P-4). Subsequently, the petitioner filed an appeal against the said order, which was dismissed by respondent No.1 learned Principal Secretary to Govt. of Haryana vide order dated 4.12.2018 (Annexure P-6) by observing as under:

“I have heard the counsel for the appellant and have gone through the case file. It is revealed from the impugned order that the respondent No.3 has already deposited the assessed amount of Rs.15,860/- in the Gram Panchayat fund on 24.04.2018. As regards criminal case, as per provision under Section 175(aa) of the Haryana Panchayati Raj Act, 1994 no person shall be a member of Panchayati Raj Institution against whom charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than

ten years. Hence, in a criminal case in which charges have not been framed, an elected member of Panchayati Raj Institution is not compulsorily required to be removed or placed under suspension compulsorily. It is the Deputy Commissioner to form an opinion whether the pending criminal case may embarrass or not the Sarpanch or Panch in discharge of his duties and as to whether he is liable to be or not to be placed under suspension. The appellant has not been able to prove that the charges have been framed against the respondent no.3. Hence, I find no infirmity in the impugned order. The appeal is dismissed.”

Section 175 (1) (aa) of the Act reads as under:

175. Disqualifications:- (1) No person shall be a Sarpanch {Omitted by Haryana Act No. 10 of 1999) or a Panch or a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who- (a) has, whether before or after the commencement of this Act, been convicted- (I) of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his conviction; or (II) of any other offence and been sentenced to imprisonment for not less than six months,

unless a period of five years or such lesser period as the Government may allow in any particular case, has elapsed since his release; or (aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years.”

The enquiry report conducted by BDPO is not on record. No doubt the FIR was registered against respondent No.5 but charges have not been framed as yet.

In view of the above, the Court does not find any merit in the present petition at this stage. As such, the same is hereby dismissed being pre-mature.

11.4.2019

gsv

[JITENDRA CHAUHAN]
JUDGE

Whether speaking / reasoned?**Yes / No****Whether reportable?****Yes / No**