

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

**CRM-M No.39250 of 2019 (O&M)
Decided on: 15.11.2019**

Phool Kanwar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vishva Bahl, Advocate
for Mr. Harkesh Manuja, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner prays for grant of anticipatory bail in FIR No.90 dated 27.02.2019, registered under Sections 409, 420, 468, 471 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Sadar Sonapat, District Sonapat.

On 16.09.2019, the following order was passed by this Court:-

“...Learned counsel for the petitioner submits that with regard to allegations pertaining to petitioner's tenure from 2010 to 2015, an inquiry was conducted by the Block Development and Panchayat Officer and in pursuance thereof, the petitioner has deposited the outstanding amount vide two receipts dated 21.03.2017 and 24.03.2017. Thereafter, the petitioner was directed to pay interest @ 21% as per Section 175 (o) of Haryana Panchayati Raj Act for the aforesaid amount and the said

amount was also deposited by the petitioner on 11.09.2018. It is thus argued that once in pursuance of the proceedings under Section 53 of Haryana Panchayati Raj Act, the petitioner has paid the entire amount, there was no occasion for the Registrar of Lokayukta to recommend for registration of criminal case against him. It is further submitted that the Haryana Panchayati Raj Act is a complete Code, in which some certain safeguards have also been provided to Sarpanch/Ex-Sarpanch, especially regarding two years limitation for initiating proceedings under Section 53 (5) of the Act, after a person ceases to be Sarpanch/Panch of the village.

Learned counsel for the petitioner has further argued that the Registrar, office of the Lokayukta, Haryana, while passing the order dated 02.11.2018, had in fact assumed the powers of the Lokayukta himself, to recommend for registration of a criminal case against the petitioner, without looking into the aforesaid fact that the petitioner has already deposited the entire outstanding amount along with interest @ 21%. It is further argued that even subsequently, when the Lokayukta, Haryana passed the order dated 07.01.2019, directing that report of the Registrar be served upon the Deputy Commissioner for filing the response and fixed a date for 13.03.2019, the Deputy Commissioner hurriedly without affording an opportunity of hearing to the petitioner, issued a letter dated 01.02.2019 to the Block Development and Panchayat Officer to take further action and the Block Development and Panchayat Officer, vide letter dated 13.02.2019, directed the SHO, Police Station Sadar Sonapat to register an FIR against the petitioner. It is next argued that the FIR has been registered without filing a response before the Lokayukta, Haryana, which was fixed for 13.03.2019 and therefore, the protection given to the

petitioner under the Haryana Panchayati Raj Act regarding limitation, has not been considered.

Notice of motion for 15.11.2019....”

Counsel for the petitioner has submitted that, in pursuance to the order dated 16.09.2019, the petitioner has appeared before the Investigating Officer and has joined the investigation.

This fact is not disputed by learned State counsel.

Counsel for the State has filed 03 separate affidavits in the Court today i.e. the affidavit of the Registrar, Lokayukta, Haryana, the affidavit of the Deputy Commissioner, Sonapat and the affidavit of the Block Development and Panchayat Officer, Murthal, Sonapat.

Before referring to the aforesaid affidavits, certain facts needs to be noticed.

On a complaint filed against the petitioner, the Executive Engineer, Panchayati Raj, Sonapat conducted an enquiry and given a report to the following effect:-

*“In this way, the Ex-Sarpanch Shri Phool Kanwar during his tenure, has caused financial **loss** of Rs.305624/- in the aforesaid works of the Gram Panchayat, Kami.*

Enquiry report is submitted to your goodself for further necessary action.

Encls:- Page 1 to 25 and original file 1 to 142.

*Sd/-
Executive Engineer,
Panchayati Raj, Sonapat.”*

In pursuance thereof, the recovery proceedings were initiated against the petitioner, who deposited the principal amount on 21.03.2017 and 23.03.2017.

On 11.07.2018, the Registrar, Lokayukta, Haryana passed the following order:-

*“The Deputy Commissioner, Sonapat vide his letter dated 10.7.2018 informed that an amount of Rs.3,05,624/- has been recovered as **loss** to the Gram Panchayat concerned but no interest has been recovered from Ex-Sarpanch. Quarter concerned is desired to submit the fact finding report after making recovery of interest under rules within 30 days.*

The quarter concerned is further desired to inform about the duties of Gram Sachiv before the date fixed. Matter is adjourned to 13.9.2018 at 10.30 a.m. for further proceedings. Copy of order be sent to the Deputy Commissioner, Sonapat for necessary compliance.

*Sd/-
Dated: 11.7.2018 (Dr. Manjit Singh)”*

Thereafter, in compliance thereof, the Block Development and Panchayat Officer, Murthal issued a notice dated 06.09.2018 subject of which reads as: *“Regarding recovery of the **loss** caused to the Gram Panchayat Kami.”*

A perusal of all the 03 documents show that at no stage, it was held that the petitioner has committed **embezzlement** and rather it was stated to be **loss** caused to the Panchayat on account of undertaking the various development work as per the enquiry report. Later on, the Registrar, Lokayukta passed another order on 02.11.2018, after the petitioner has deposited the principal amount of Rs.3,05,264/- alongwith 21% interest w.e.f. December, 2014 to March 2017 i.e. Rs.1,49,571/-. Thereafter, the Registrar, Lokayukta passed the order dated 02.11.2018 which reads as under:-

*“6. No doubt the Sarpanch has deposited the **loss** which was caused to the Gram Panchayat alongwith interest but the Sarpanch has committed the offence of cheating as well as the **embezzlement** of the Panchayat fund, as such a criminal case was required to be registered against him under Sections 409/420/468/471 etc. of Indian Penal Code. It is pertinent to mention that in view of Section 53(5) of the Haryana Panchayati Raj Act, there is no bar to register a criminal case of embezzlement against former Sarpanch Sh. Pawan Kumar. Reliance can be place on the law laid down by our Hon'ble High Court in case titled as Smt. Sona Devi versus State of Haryana 2008 (2) RCR (Criminal) 584 wherein it was observed as under:-*

“On bare reading of the aforesaid provision, it could be observed that legal action has been barred in respect of any Act, done in good faith under this Act. The act of the embezzlement cannot, in any way, be terms as an act done in good faith or the act done under this Act. As such, it would be suffice to say that no bar has been created by Section 204 of the Act, for registration of the case, against the petitioner, who intentionally and fraudulently, in order to cause benefit to herself by causing loss to the Government, embezzled an amount of Rs.3,05,624/-.”

7. As such a report is submitted to the Hon'ble Lokayukta that a criminal case for the commission of offences punishable under Sections 409/420/468/471 of the IPC is required to be registered against the Sarpanch Sh. Phull Kumar as well as the departmental action is required to be taken against Gram Sachiv who is guilty of dereliction of duty and accordingly recommendation are required to be made to the competent authorities.

Sd/-

Dated: 02.11.2018

Registrar”

For the first time, the Registrar replaced the word '**loss**' with '**embezzlement**' and when this order was sent by the Lokayukta to the Deputy Commissioner on 07.01.2019 for serving the same to the complainant, the present FIR was got registered against the petitioner.

A perusal of the affidavit filed by the Block Development and Panchayat Officer, Murthal, Sonapat and the affidavit of the Registrar, Lokayukta, Haryana, show that these are contradictory.

The para 8 of the affidavit of the Registrar, Lokayukta, Haryana, reads as under:-

“8. That on the basis of the preliminary enquiry report was submitted to the Hon'ble Lokayukta, the Hon'ble Lokayukta Haryana, vide its order dated 07.01.2019, ordered to serve the preliminary enquiry report upon the complaint, the accused i.e. Sarpanch Phool Kumar (Petitioner herein this Petition), Gram Sachiv and the Deputy Commissioner, Sonipat for filing their responses by next date. The true typed copy of orders dated 07.01.2019 is annexed as Annexure LR-3. It is pertinent to mention here that the Hon'ble Lokayukta, in its order dated 07.01.2019, never passed any orders for registration of the FIR against the accused i.e. Sarpanch Phool Kumar (Petitioner herein this Petition), but only sought the reply of the Deputy Commissioner, Sonipat. The FIR in question before this Hon'ble Court in the main Petition was not registered at the instance of the institution of the Lokayukta, Haryana but at the end of the concerned authorities. The letter which was sent to the Deputy Commissioner, Sonipat dated 18.01.2019 bearing memo No.Lok/HR/2016/4/19 was referred in the

FIR No.90 dated 27.02.2019 registered at Police Station Sonipat not for the purpose of directions for registration of the FIR. A copy of the letter dated 18.01.2019 sent to the Deputy Commissioner, Sonipat is annexed herewith as Annexure LR-4.”

Para 4 of the affidavit of the Block Development and Panchayat Officer, Sonapat, in this regard, reads as under:-

“4. That as far as the lodging of FIR before 13.03.2019 is concerned, in this regard, it is submitted that said complaint was listed before the Hon'ble Lokayukta, Haryana on 07.01.2019, when copy of report of learned Registrar was served upon the then Deputy Commissioner, Sonipat for filing response by next date of hearing i.e. 13.03.2019. In the report of Registrar, it was observed that a criminal case for the commission of offences punishable under Sections 409/420/468/471 IPC is required to be registered against the Sarpanch Shri Phool Kumar as well as the departmental action is required to be taken against Gram Sachiv, who is guilty of dereliction of duty and accordingly, recommendations are required to be made to the competent authorities. It is further submitted that acting upon the communication received from the then Deputy Commissioner, Sonipat and letter no.LOC/HR/2016/4/19 dated 18.01.2019 attached with report of Registrar, deponent made complaint to the SHO, P.S. Sadar, Sonipat to lodge the FIR and after registration of FIR, the same was further intimated to the then Deputy Commissioner, Sonipat that the FIR stood registered.”

It is worth noticing that while observing in the order dated 22.11.2018, the Registrar, Lokayukta, Haryana replaced the word '**loss**' with '**embezzlement**', perhaps on the basis of the judgment of this Court

in “*Smt. Sona Devi vs State of Haryana*”, 2008(2) RCR (Criminal) 584.

A perusal of this judgment show that, in fact, the Registrar of Lokayukta has not properly interpreted this judgment as it is observed in para 2 of this judgment that after a notice was given to the B.D.P.O. concerned to the Sarpanch Sona Devi to make good **loss** of the amount, neither any explanation was given nor the amount was deposited and therefore, holding that she has embezzled the amount, the FIR was registered whereas in the instant case, the facts are on a different footing as the FIR was registered after the petitioner has deposited the amount along with 21% interest.

Even, the judgment in *Sona Devi's case (supra)* stands distinguished by this Court in a subsequent judgment dated 19.11.2018 titled as “*Naresh Kumar and others vs State of Haryana*”, 2019(1) RCR (Civil) 430. In this case, the FIR was quashed as the Sarpanch had deposited the amount with interest prior to registration of the FIR. With reference to *Sona Devi's case (supra)*, it was observed in this case that the definition of '*misconduct*' is taken with reference to fraud and misfeasance as per Section 237 of the Companies Act, whereas, in the Haryana Panchayati Raj Act, under Section 53 it is defined with reference to loss, waste and misapplication. It was further observed that in *Sona Devi's case (supra)*, the relevant provisions of Section 175(1) (i) of the Act as interpreted by the Hon'ble Division Bench of this Court in case “*Anguri Devi vs State of Haryana*”, 1997(3) RCR (Civil) 236, were not considered. It is further observed in this case as under:-

“Therefore, a conjoint reading of Section 53, 175(1)

(i) and Section 204 of the Act show that a Sarpanch is entitled to protection against civil and criminal liability in respect of an act done in good faith under the Act if:

(a) By way of an order of assessment in writing, passed by the competent authority under Section 53(2) or by the Appellate Authority under Section 53(4) of the Act, holding that the concerned Panch or Sarpanch is liable to pay the assessed amount due on account of loss, waste or misapplication of Gram Fund after affording an adequate opportunity of hearing and thereafter steps for recovery are taken and;

(b) The Sarpanch or Panch, in pursuance to the recovery notice has deposited the amount due.

(c) The competent/ Appellate Authority has passed an order under Section 53 of the Act holding that the liability so assessed is a consequence of his neglect causing loss, waste or misapplication of Gram Fund which may not amount to misconduct and may be termed as misapplication of Gram Fund as per Section 52(3) of the Act as every such act may not amount to misconduct.

(d) As per Section 175(1)(i) if a Sarpanch or a Panch fails to pay any sum recoverable from him in accordance with Chapter and Provisions of the Act [including an order under Section 53 of the Act as per Anguri Devi's case (supra)], within a period of three months, after a special notice in accordance with law is served upon him and if the amount is paid, there cannot be a disqualification. Therefore, in the light of the same, if a Sarpanch/Panch deposits the amount in pursuance to the special notice, it cannot be termed as a misconduct unless it is so held specifically by the competent/Appellate Authority.

(f) On both counts (b) and (d), giving of a notice for recovery is mandatory and it is only after the service of the notice if the amount due is not deposited within a

stipulated time given in notice, it would be termed as misconduct as per Section 204 of the Act for which an FIR may also be registered.”

In the light of the aforesaid judgment, it is apparent that the proceedings which were pending against the petitioners were with regard to recovery of financial **loss** caused to the Gram Panchayat in terms of the enquiry report of the Executive Engineer, the notices issued by the Block Development and Panchayat Officer as well as the Registrar himself for recovery of the aforesaid **loss** and after the principal amount along with 21% interest was deposited by the petitioner Sarpanch, the Registrar, Lokayukta, while passing the order dated 02.11.2018 treated the word '**loss**' as '**embezzlement**' without there being any such finding in the enquiry report. Therefore, I find that the affidavit filed by the Block Development and Panchayat Officer, Sonapat as well as the affidavit of the Deputy Commissioner, Sonapat are factually correct whereas the affidavit filed by the Registrar office of Lokayukta, Haryana, is factually incorrect.

Accordingly, the present petition is allowed and the interim bail granted to the petitioner vide order dated 16.09.2019 is made absolute subject to the conditions envisaged under Section 438(2) Cr.P.C.

(ARVIND SINGH SANGWAN)
JUDGE

15.11.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No