

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**Civil Writ Petition No. 9636 of 2020 (O&M)
Date of decision : July 31, 2020**

Naveen Kumar and others

....Petitioners

versus

Union Territory and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Sajjan Singh, Advocate, for the petitioners

Fateh Deep Singh, J. (Oral)

The matter has been taken up through Video-conferencing on account of outbreak of pandemic COVID-19.

The petitioners in all numbering five have invoked the jurisdiction of this Court through instant writ petition under Articles 226/227 of the Constitution of India. Through the instant invocation, the petitioners have sought directions to the official respondents to conclude the investigation of case bearing FIR No. 128 dated 29.7.2016, under Sections 409, 420, 120-B IPC and under Sections 8,9, and 13 of Prevention of Corruption Act, 1988, registered with

Police Station, West Sector-11, Chandigarh in a time bound manner seeking further directions to the trial court where the case is pending to dispose of the same in similar fashion.

Heard counsel for the petitioners and perused the records.

The brief background is that Chandigarh Administration through its advertisement on 3.11.2014 invited applications for recruitment and appointment of certain posts of Junior Basic Teacher (JBT), Nursery Teachers (NTT) and Masters/Mistresses (TGT). The petitioners were some of the candidates who were selected and offered appointment as JBT/PGT in pursuance of these advertisements. Subsequently, it had come to light that the papers for these examinations of JBT/PGT were leaked and on the basis of which the present case was got registered. As a consequence of this malpractice, Chandigarh Administration passed orders on 30.5.2018 thereby cancelling the selections for these posts of JBT/PGT teachers. The petitioners claimed that the candidates challenged these orders in the Central Administrative Tribunal which vide orders dated 6.9.2019 set aside the same. The UT Administration challenged this order of the Tribunal before a Division Bench of this Court in a bunch of writ petitions which too stood

disposed of vide orders dated 27.11.2019. The decision has gone in favour of the candidates. It is in the light of the same the petitioners have sought this invocation for expediting the investigation and hence the trial of the criminal case.

Section 190 of Cr.P.C. which is reproduced as below:-

“190. Cognizance of offences by Magistrates.—

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that

such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under

sub-section (1) of such offences as are within his competence to inquire into or try.”

and by virtue of which a Magistrate can ignore the conclusion arriving at by the Investigating Officer and independently apply his mind to the facts emerging from the investigations and take

cognizance of the same if he thinks fit and exercise his powers under Section 190(1)(b) of the Cr.P.C. Section 5(4) of the Prevention of Corruption Act, 1988 is as follows:-

“5. Procedure and powers of Special Judge.—

(1) to (3) xxx xxx xxx xxx xxx

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.”

(5) & (6) xxx xxx xxx xxx

Since the Court of Special Judge happens to be a Court of original criminal jurisdiction and thus to make it functionally oriented and therefore, for this end-in view this statutory provision has come about. The Hon’ble Apex Court in **Sakiri Vasu vs State of U.P. and others, 2008(1) R.C.R. (Criminal) 392** has held that by virtue of Section 156 of the Cr.P.C. the Magistrate has vast powers and can ensure proper investigation and if the Magistrate is of the view that the investigations are not being done satisfactorily, he is well within his powers to issue directions to the police to investigate properly

and can monitor the same and where appropriate can order reopening of the investigation even after submission of the report under Section 173 Cr.P.C. The Hon'ble Supreme Court of India further held that it is well settled when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. Since by virtue of Statute such wide powers have been given to a Magistrate, it would have been appropriate for the petitioners to have invoked the jurisdiction of the concerned Magistrate rather than bypassing all the courts below in utter disregard to the principle of hierarchy and un-necessarily burdening this Court by such petitions wherein relief being sought by the petitioners could very well be granted by a Magistrate. Such like petitions needs to be discouraged at the very thresh hold of their filing, else all cannons of justice would be thrown off to the winds. There being no merits, in the present petition for this Court to invoke its constitutional powers under Articles 226/227 of the Constitution of India, the same as such stands dismissed.

July 31, 2020
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No