IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-1090-2021 (O&M)

Date of Decision: 29.09.2021

Sarvesh Mathur ...Petitioner

Versus

State of Haryana & another ...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Sarvesh Mathur – petitioner in person.

Mr. Rajiv Sidhu, DAG, Haryana.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner has approached this Court seeking issuance of a direction to respondent No.2 to register an FIR on the basis of a complaint dated 19.03.2012 (Annexure P-1) and to conduct a fair, impartial and time bound investigation in the said complaint in discharge of his statutory duties. Another prayer has been made for quashing the defamatory and wrong report dated 04.07.2019 of the Gurugram Police and to protect the life and liberty of the petitioner and not to intimidate or harass him in any manner.

2. A perusal of the complaint dated 19.03.2012 (Annexure P-1) would show that the complainant (petitioner herein) has made the said complaint against M/s Pricewaterhouse Coopers Pvt. Ltd. (PWC) and its various office bearers. The complainant has alleged therein that he is an ex-employee of M/s Pricewaterhouse Coopers Pvt. Ltd. (PWC) and had been working as Chief Financial Officer.

It is alleged that while working in the said capacity in the said company, he found various financial irregularities running into crores of rupees, which attracted stringent provisions of Indian Penal Code and also violation of various other Acts. The complainant has referred to some of the said instances of irregularities as follow:

"1. Wrong booking of expenses of approximately 1700/1800 employees who were not even on the rolls of the Accused Company amounting to willful falsification of the accounts of the company which is a criminal offence and by doing this wrongful acts, the accused had committed grave loss to the exchequer of the Government by way of lower payment of Income tax. Please refer to Annexure A.

2. In another case of willful manipulation of the books of accounts, expenses amounting to approximately Rupees 16.5 crores were booked in the accounts without any bills/supporting thereby resulting in understatement of profit leading to evasion of tax. Please refer to Annexure B. Ironically, Mr. Alok Adhikari, who as the Financial Controller, was a willing accomplice to the manipulation of accounts, has with a view to harass the complainant, filed on behalf of PWC, a frivolous criminal complaint against the complainant.

3. In yet another case of manipulation of accounts leading to falsification of books of accounts, violation of Service Tax Act and Income Tax Act, Mr. Rajana Varma, Director Finance, has authorized adjustment of Rs.5 crores between separate legal entities but without raising of bills. The same manipulations were done year before also. Please refer to Annexure C.

4. The accused Nos.2 to 6 on behalf of the accused company and its various network Audit Firms, had filed wrong tax returns for various financial/Assessment Years and the complainant had highlighted the same to the accused No.2

to 6 with suggestions for corrective action but no heed was paid by them despite reminders from the complainant which shows the malafide intention of the accused to commit the wrong and by doing the wrongful act, making heavy losses to the exchequer of the Government. Please refer Annexure D.

5. Wrong booking of various expenses relating to employees, infrastructure etc. falsification of accounts of 3 Assurances Firms – combined impact of more than Rs.50-60 crores. This was highlighted in writing by the complainant to its then Chairman and Vice Chairman. Please refer Annexure E. Surprisingly, no corrective action was taken by them also.

6. Recent mail dated December 7, 2011 (Annexure F) which again highlighted the several willful wrong doings of PWC which was written by the complainant to the Managing Director and Legal head. This was subsequently sent to the Chairman also. Despite being put on notice of the grave financial irregularities being committed by PWC, no action was taken by them and instead they continued to harass and torment the complainant.

7. The acts of the accused are not limited to falsification of books of accounts, but amongst others, extend to evasion of huge amounts of Income Tax, misrepresentation to Banks, violations of RBI/FEMA Acts and other extent regulations and rules, offences pertaining to service tax laws, violation of accounting standards etc."

3. The petitioner has submitted that despite the said complaint having been made several years back, no action was taken thereupon. Several other complaints/reminders were also submitted by the complainant. The petitioner faced with the in-action on the part of the police was constrained to file an application under Section 156(3) Cr.P.C. (Annexure P-14) before the Court of learned JMIC,

Gurugram, which came to be dismissed vide order dated 09.10.2019 (Annexure P-15). The petitioner has further submitted that there is ample evidence on record to show that his ex-employer and other office bearers have been indulging in bungling of record so as to cause loss to the State Exchequer worth crores of rupees and, thus, they ought to be taken to task and were required to be punished.

4. The petitioner has submitted that his ex-employer and other office bearers are persons of means and are influential persons and while exercising their influence have been harassing the petitioner through police and that police officials have been visiting his home at odd hours so as to unnecessarily harass him.

5. Opposing the petition, learned State counsel has submitted that in the instant case the petitioner had been removed from service by M/s Pricewaterhouse Coopers Pvt. Ltd. (PWC) and being disgruntled and in order to settle scores, he has been filing one complaint after another against the ex-employer and other office bearers and that the said complaints have been duly enquired into and disposed of. Learned State counsel, in this regard, has referred to para 1 of the Preliminary Submissions of the reply dated 03.08.2021, wherein the details of the complaints duly enquired into by the Gurugram Police have been referred to. The said details are as follow:

> "(a) That the complaint No.CPGN/R/12/1627 dated 19.03.2012 (date of complaint 19.03.2012) was got enquired by the Deputy Commissioner of Police, East, Gurugram and the same was seen and filed by the said DCP.

(b) That the complaint No.652-Z dated 14.08.2012 (date of complaint 13.08.2012) was also got enquired by the Deputy Commissioner of Police, East, Gurugram and the same was seen and filed by the said DCP.

(c) That the complaint No.210-Z dated 15.01.2019 (date of complaint 07.01.2019) was got enquired through ASI Arjun, P.S. DLF Phase-II, Gurugram. During enquiry, no cognizable offence was found to be made out and as such the said complaint was recommended to be filed through the then SHO, P.S. DLF Phase-II, Gurugram and the ACP, DLF, Gurugram. The same was seen and filed by the Deputy Commissioner of Police, East, Gurugram.

(d) That the complaint No.3346/CP/2020/E-mail dated 12.03.2020 (date of complaint 08.03.2020) was got enquired through SI Rohtash, P.S.Badshahpur, Gurugram. During enquiry, it was found that two police officials were sent to the house of the petitioner only to enquire as to whether any of his complaint is pending or not, as the reply regarding the same was to be submitted before this Hon'ble High Court in CRM-M No.5112 of 2019. Thus, the said complaint was recommended to be filed through the then SHO, P.S. Badshahpur, Gurugram and the then ACP Sohna, Gurugram. The complaint was seen and filed by the Deputy Commissioner of Police, South, Gurugram.

(e) That in complaint No.22765 dated 18.10.2019, a team headed by DCP East, Gurugram and consisting of ACP, DLF, Gurugram and Insp./EOW, Gurugram was constituted to enquire about the complaint. The same was seen and filed by the DCP East, Gurugram, being found to be a matter pertaining to civil dispute."

6. Learned State counsel has further submitted that the petitioner has virtually exhausted his remedies inasmuch as even his application under Section 156(3) Cr.P.C. stands dismissed by the Court of learned JMIC, Gurugram and which has attained finality inasmuch as the same has not specifically been challenged by the petitioner.

7. In respect of matter pertaining to evasion of Income Tax and other dues by M/s Pricewaterhouse Coopers Pvt. Ltd. (PWC), the learned State counsel has informed that pursuant to a direction issued by the Hon'ble Supreme Court in PIL (Public Interest Litigation), the Enforcement Directorate had enquired into the financial affairs of the company in question and pursuant thereto a penalty of Rs.230 crores was imposed upon the said company.

8. I have considered rival submissions addressed before this Court.

9. First of all, it would be noticed that the Gurugram police had considered several of the complaints/representations moved by the petitioner. Further, apart from that even the application filed by the petitioner under Section 156(3) Cr.P.C. before the learned JMIC, Gurugram has been considered in detail and had been declined. Upon perusing the same, this Court does not find any infirmity in the said order.

10. Still further, this Court finds that the petitioner had mainly brought to light the irregularities committed by his ex-employer i.e. M/s Pricewaterhouse Coopers Pvt. Ltd. (PWC), which also have been examined by the Enforcement Directorate pursuant to the directions issued by the Hon'ble Supreme Court and a colossal penalty of Rs.230 crores had been imposed.

11. Though the petitioner has submitted that in fact the fraud committed by the said company is to the extent of Rs.700 crores, but since the matter has already been examined by the Enforcement Directorate, this Court does not find any ground to issue any direction in this regard. The prayer/s made in the

aforesaid context as regards the issuance of direction for lodging of an FIR are without any merit and are hereby declined.

12. As regards the prayer of the petitioner for quashing/expunging "defamatory and wrong report dated 04.07.2019 of Gurugram Police", this Court upon perusal of the said report finds that ASI Arjun upon being entrusted with the matter pertaining to complaint dated 12.01.2019 had enquired into the same and in the enquiry report has referred to an affidavit furnished by the petitioner – Sarvesh Mathur. The relevant extract from the said report reads as follows:

> "………Complainant's client Shri Sarvesh Mathur, during the investigation of the complaint against him accepted that he had transferred confidential documents to his personal e-mail ID in respect of which PWC's ex employee Sarvesh Mathur had given in writing in the affidavit given in connection with the investigation that I had stolen company's confidential documents and complainant's client Shri Sarvesh Mathur in the presence of Colonel S.C.Mathur and Shri Alok Adhikari deleted from his Lap Top and on deletion PWC company took back its complaint and complainant's client as per terms of settlement received Rs.17,97,465 on 13.04.2012."

13. In the aforesaid report, ASI Arjun concluded that the complaint does not disclose commission of any cognizable offence and recommended that the complaint be consigned to record. The said report was sent through the SHO, P.S.DLF, Phase-II, Gurugram and the Assistant Commissioner of Police, DLF, Gurugram and was 'seen' and 'filed' by the Deputy Commissioner of Police, East, Gurugram. In case, there is anything recorded in the enquiry

report, which can be termed to be 'adverse' to the petitioner, the same was recorded by the police officials concerned in discharge of their official duties and it cannot be said that they had any intention to defame the petitioner. In any case, it is on the basis of an affidavit of the petitioner that the findings have been recorded, which have been accepted by the Deputy Commissioner of Police, East, Gurugram as well. This Court does not find that anything recorded in the enquiry needs to be expunged. It is, however, clarified that any finding that may have been recorded in the report would be required to be proved and established by leading independent evidence in case the same question arises before any judicial court. As such, there is no occasion for setting aside the so-called 'defamatory report'.

14. However, as far as the prayer of the petitioner for protecting his life and liberty is concerned, it shall always be open to the petitioner to move an appropriate detailed application to the Commissioner of Police, Gurugram delineating therein the reasons for his apprehension of any threat to his life and liberty. In case, any such application is filed, it shall be got examined by the Commissioner of Police, Gurugram and in case the allegations are found to be well founded, then necessary steps, as may be warranted under law, be taken thereupon so as to ensure that no harm is caused to the petitioner.

15. The petition stands disposed of accordingly.

29.09.2021 **(GURVINDER SINGH GILL)**
Vimal **JUDGE**

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