

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

CWP No.3743 of 2021
Date of decision: 17.02.2021

Gurvinder Sokhal

...Petitioner

Vs.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Vaibhav Sehgal, Advocate,
for the petitioner.

Ritu Bahri, J. (oral)

Petitioner is seeking quashing of polling/casting of votes for the elections of Municipal Council, Ward No.3, Nurmahal, conducted on 14.02.2021 keeping in view grave illegal and malafide electoral malpractices of casting of fake votes and booth capturing committed by respondent Nos.3 and 4.

Learned counsel for the petitioner has referred to the complaint dated 14.02.2021 (Annexure P-1), which was made by one Sonia Bhatia (Polling Agent of the petitioner), stating that at the time of casting of votes, one lady had cast fake vote. She (Sonia Bhatia) had objected and caught that lady at the spot. Name of that lady was Harpreet Kaur and the vote actually related to Gitanjali Kareer, to whom she knew well. Thereafter, a representation dated 14.02.2021 (Annexure P-2) was sent to the Election Commissioner of Punjab, for re-conducting the election in view of casting of fake votes at Ward No.3. In this letter, it was stated that CCTV cameras

fake person had cast the vote. It was also stated that CCTV cameras were not installed inside the Polling Booth. Petitioner has placed on record copy of FIR No.11 dated 14.02.2021, registered under Section 171-F of IPC at Police Station, Nurmehal as Annexure P-3. Pursuant to the said FIR, the police has to investigate the case of fake voting of one Harpreet Kaur in place of Gitanjali Kareer.

Learned counsel for the respondents has stated that investigation in the aforesaid FIR, is going on and necessary evidence with regard to casting of fake vote shall be collected by the Investigating Officer and the same shall be preserved as the counting is going on.

Learned counsel for the petitioner has referred to the judgment passed by Hon'ble the Supreme Court in **Election Commission of India through Secretary vs. Ashok Kumar and others**, 2000 (8) SCC 216, whereby while referring to the judgment passed in **Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others**, AIR 1978 SC 851, it has been observed that before the result of the election is declared, assistance of Court may be urgently and immediately needed to preserve the evidence without in any manner intermeddling with or thwarting the progress of election. A perusal of this judgment shows that under Section 81 of the Representation of the People Act, 1951, an election petition cannot be filed before the date of election i.e. The date on which the returned candidate is declared elected.

In this backdrop, the evidence which is to be collected during investigation of the FIR (Annexure P-3) should be preserved, so that appropriate steps can be taken by a candidate, who is complainant in the FIR under the relevant provisions of Representation of the People Act,

1951.

Since counting, in the present case, is going on, this petition is disposed of by giving direction to the Superintendent of Police, Jalandhar, to collect the evidence during investigation of FIR No.11 dated 14.02.2021 (Annexure P-3) and preserve the same, so that the evidence with respect to complaint dated 14.02.2021 (Annexure P-1) and representation dated 14.02.2021 (Annexure P-2) can be made basis for the future steps, which the petitioner wants to take, after declaration of the result.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

17.02.2021
ajp

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