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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 15.12.2021

1. **CRM-M-12494-2021(O&M)**

Shiv Shankar Mittal .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

2. **CRM-M-17514-2021**

Ashok Kumar Goel .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

3. **CRM-M-17533-2021**

Sardool Singh .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

4. **CRM-M-17580-2021**

Sri Krishan Sharma .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

5. **CRM-M-17644-2021**

Sudesh Kumar Deora .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

6. **CRM-M-23079-2021**

Harpal Kaur .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

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7. **CRM-M-27947-2021**

Asha Rani .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

8. **CRM-M-27949-2021**

Subhash Chander Aggarwal .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

9. **CRM-M-27958-2021**

Pardeep Kumar .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

10. **CRM-M-28189-2021**

Madan Lal .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

11. **CRM-M-28195-2021**

Sandeep Kumar .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

12. **CRM-M-28202-2021**

Brij Mohan Mittal .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

13. **CRM-M-28216-2021**

Suman Mittal .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

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14. **CRM-M-28220-2021**

Jagat Ram Mittal .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

15. **CRM-M-28229-2021**

Sanjay Gupta .....Petitioner

Vs.

State of Punjab and Anr. ....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Gaurav Aggarwal, Advocate for the petitioners.

Mr. Rana Harjasdeep Singh, DAG, Punjab.

Mr. Amanpreet Singh, Advocate
for the respondent No.2-complainant.

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AMOL RATTAN SINGH, J. (Oral)

CRM-37856-2021 in
CRM-M-12494-2021

Vide this application, the applicant-respondent No.2 seeks to place on record a reply by way of an affidavit, along with some documents, as Annexures R-1 to R-15 thereto.

The application is allowed subject to all just exceptions.

The affidavit of respondent No.2, along with the documents, Annexures R-1 to R-15, are taken on record.

CRM-M-12494-2021 & other connected cases

This order shall dispose of all the aforesaid petitions as the same issue is involved in all of them.

By these petitions, the petitioner in each petition seeks

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quashing of FIR No.0232, dated 30.10.2020, registered at Police Station City Kotkapura, District Faridkot, alleging therein the commission of offences punishable under the provisions of Sections 406, 420, 120-B of the IPC, as also all other subsequent proceedings arising therefrom, on the basis of a compromise.

On 22.09.2021 the following order had been passed by this Court:

> *"A joint reply on behalf of the respondent State has been filed by way of an affidavit of Dr. Bal Krishan Singla, Superintendent of Police, PBI, Faridkot, dated 12.08.2021, which is ordered to be taken on record.*
>
> *The affidavit earlier filed by the DSP, Sub-Division Kotkapura, dated 12.05.2021, is also ordered to be taken on record.*
>
> *Having gone through the detailed affidavit by the SP, PBI, two things seems to be emerging; that the petitioners in these petitions, i.e. essentially the Management of Amarpati Memorial School, Kotkapura, are alleged to have committed a fraud with regard to payment into the Employees Provident Fund, with actually higher salaries paid to the teachers, but with them shown to have been paid only Rs.500/-; second, that there was an embezzlement of Rs.1 crore as regards public funds, with the SP also having referred to an inquiry conducted by the Senior Legal Advisor, Punjab School Education Board, i.e. Ms. Sukhwinder Kaur Saroa.*
>
> *Learned counsel for the petitioners however submits that with Rs.5,16,767/- having been already paid as per the demand raised by the Provident Fund Commissioner, and as regards the second demand of Rs.4,55,188/-, the Management having filed an appeal before the competent authority, which is still pending, therefore there can be no embezzlement of the amount due to the Provident Fund*

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Commissioner as on date, and consequently no FIR registerable on that count. As regards the alleged embezzlement of public fund of Rs.1 crore, he wishes to draw attention to Annexures P-2 to P-12 with the petition, to submit that inquires were earlier held in that regard, with the petitioners and the management having actually been exonerated.

The details of those annexures have not been gone into by this court today, but what is to be observed is that no details of any embezzlement of Rs.1 core has been given in the affidavit; and consequently, the SP, PBI, Faridkot, is directed to file another affidavit, annexing therewith, firstly, the report of the Senior Legal Advisor, Punjab School Education Board, as also giving therein the details of the alleged embezzlement of Rs.1 crore, as is alleged to have been made by the petitioners.

He will also answer as to whether any allegation as regards the embezzlement of provident fund money would still exist after payment of slightly more than half of what has been demanded by the Provident Fund Commissioner, with the second order as regards the deposit of Rs.4,55,188/- having been appealed against by the petitioners, before the Provident Fund authorities themselves.

Further, the SP, PBI, shall also specifically state as to what was found so far in the investigation as regards the allegations made by the complainant in the FIR, that there was tampering in the letter(s)/orders issued by the District Magistrate/Deputy Commissioner, Faridkot, because as regards that part, nothing is seen to be forthcoming from the reply filed so far at least, in the detailed preliminary submissions contained therein.

It is also noticed that learned counsel for the petitioners has submitted that respondent no.2 (complainant in the FIR), is a chronic litigant, who files complaints against all

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authorities time and again.

Whereas that may or may not be so, however, if any allegations made are actually found to be correct in an investigation carried out, that would not aid the petitioners as regards the quashing of the FIR, if there is merit in the allegation contained in the FIR.

For the affidavit of the SP, PBI, to be filed, adjourned to 13.10.2021.

In view of the detailed affidavit filed on behalf of the respondent State (with no reply filed by respondent no.2 so far in these petitions), learned counsel for the petitionerss would address argument as to why the interim order passed by this court should not be vacated, especially in view of the ratio of the judgment of the Supreme Court in M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others (Crl. Appeal No.330 of 2021, decided on April 13, 2021).

Learned State counsel has also cited a judgment of the Supreme Court in State of Haryana v. Bhajan Lal, AIR 1993 SC 1348 as regards parameters on which an FIR can be quashed.

Interim order to continue till then only and specifically, with it made absolutely clear that any request made on that date by counsel for the petitioners for any reason whatsoever, will entail immediate vacation of the interim order, with no further order required to be passed in that regard.

However, the interim order is being presently continued in view of the queries put by this court herein above as regards the existence of any material on the basis of which the allegations can be said to be prima facie existent against the petitioners.

To be shown in the urgent motion list.

A copy of this order be placed on the file of the other connected matters too".

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Thus, essentially the SP, PBI, had been directed to answer the following queries of this Court by way of another affidavit filed:-

(i) the details of the embezzlement of Rs.1 crore alleged to have been made by the petitioner;

(ii) as to whether any allegations as regards the embezzlement of provident fund money would still exist after the payment had been made to the Provident Fund Commissioner as regards one demand raised and with the appeal pending before the competent authority as regards the second demand raised; and

(iii) as to what has been found, as per the investigation, regarding the allegations by the complainant that there was tampering in the letters/orders issued by the District Magistrate/Deputy Commissioner, Faridkot.

Pursuant thereto an affidavit dated 12.10.2021 has been filed by the SP, Detective, Faridkot, stating therein that as regards the alleged embezzlement of Rs.1 crore by the petitioners in these petitions (as per the allegations), it was found as follows:

> *" 3.That having gone into this enquiry report of Senior Legal Advisor, in appears that the enquiry officer had dealt with the matter deeply and minutely secrutnized the financial data and it was emerged out that salary statements were being prepared at three different levels. One record was prepared for the purpose of EPF fund showing monthly salary of Rs.500/- to 1200/- P.M whereas the another record depicted the salary paid to the teachers as per P.S.E.B guidelines turning of Rs.4550-5480-5800/- which was necessary to maintain affiliation with Board and another record was prepared for producing the same before other various departments of local administration and Police etc.*
>
> *4. That as per the salaries fixed by PSEB, the school was liable to pay a monthly salary of Rs.4550-5480-5800/- per month which on average is considered Rs.5000/- P.M and school had a teaching staff upto the strength of 30 teachers. As*

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> *per the enquiry report, teachers were paid a monthly salary of Rs.1000-2500/- P.M which in average comes to Rs.1250/- P.M and thereby the one year financial loss caused by school to its teaching staff comes around Rs.14 Lakh. The school has commenced its working by constituted its 16 members Executive body in the year 1998-99 and in the year 2003 the School has formed a new working committee repeating some of its previous members. Accordingly over the past 10 years, school had committed embezzlement in the salary of teaching staff amount more than one crore excluding other financial anomalies of EPF and excessive fee charged from its students and also compelling to the students to buy books published by their own publication."*

As regards the alleged embezzlement of Provident Fund, essentially it is stated that the SP is not aware of the current status of the appeal filed but the payment of the amounts due cannot absolve the petitioners of having committed embezzlement of provident fund.

As regards the allegation of the complainant (respondent No.2 herein), that the record in two complaint cases had been tampered with by the petitioner, the SP has stated that the said complaint was subject matter of FIR No.305 of 2011, registered at Police Station City Faridkot, arraigning respondent No.2 as an accused but with him having been acquitted by the trial Court on 28.11.2016; and therefore if he had any grievance with regard to tampering of such record by the petitioner, he should have raised that matter with the trial Court itself, and therefore as regards that complaint, the District Police/Investigating Agency was not taking any action.

In the light of the above, what is to be observed by this court is that obviously as regards the issue of any embezzlement of provident fund, that would be eventually governed by the outcome of the proceedings by the

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concerned authority under the Employees Provident Fund Act, 1952; and consequently the petitioners would obviously take their remedies before the trial court in that regard accordingly.

However, in view of what has been stated as regards the alleged embezzlement of funds by the petitioners, to the tune of Rs.1 crore plus, though learned counsel for the petitioners wishes to point out from the record that even the teachers, whose salaries are alleged to have been 'under valued', had given statements in favour of the petitioners, in my opinion that would need to be considered by the trial Court along with all other evidence led before it, and therefore the FIR in question cannot be quashed simply on account of such statements, with this Court obviously not holding a trial.

Hence, without making any comment on the actual merits of the case, I do not find any ground to entertain these petitions, which are consequently dismissed.

However, on the oral prayer made by learned counsel for the petitioners as regards all petitioners in these petitions who are above 65 years of age, it is directed that they be not arrested without giving them a prior notice of 10 days. Of course, as to whether any particular petitioner is above the age of 65 years or not, would need to be proved by the petitioner concerned, by way of documentary record before the arresting officer.

December 15, 2021 **(AMOL RATTAN SINGH)**
Sunil Devi **JUDGE**

Whether speaking/reasoned : YES
Whether Reportable : NO

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