

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

C.W.P.No.13623 of 2021 (O&M)

Date of Order: 30.07.2021

Ranjodh Singh and another

..Petitioners

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arjun Sheoran, Advocate,
for the petitioners.

Ms. Kanica Sachdeva, AAG, Punjab

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conference on account of restricted functioning of the Courts.

Petitioner no.1-Ranjodh Singh and petitioner no.2-Sukhmander Singh are stated to have remained Sarpanch of the Village Ghudda from 2008 to 2013 and 2013 to 2018, respectively. They assail the correctness of the communication dated 18.06.2021 sent by the Inspector of Police, Vigilance Bureau, Punjab Unit Bathinda to the Block Development and Panchayat Officer, Sangat, District Bathinda, seeking attendance of the Panchayat Secretary of the village Ghudda, along with the information sought for. The petitioners claim that the aforesaid communication is without jurisdiction. Hence, they pray for a writ of certiorari to quash the communication dated 18.06.2021.

The learned counsel representing the petitioners, while drawing the attention of the Court to the guidelines dated 22.02.1983, contends that

the Government of Punjab has taken a policy decision not to inquire into the complaints made against the Sarpanches, Panches and Municipal Councilors by the Vigilance Department/Vigilance Bureau. He contends that therefore, the Vigilance Bureau does not have the jurisdiction to investigate. He further contends that an inquiry into the allegations has already been held by the Divisional Deputy Director, Rural Development and Panchayat, Hoshiarpur, absolving the petitioners. Thus, a second inquiry cannot be held. He, in support of his arguments, relies upon Section 216 and 222 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act'). He submits that the provision of Section 222 of the Act overrides the provisions of the Indian Penal Code, 1860 as well as the Code of Criminal Procedure, 1973. He further relies upon the orders passed by the various Division Benches Annexure P-4, P-6 and P-7, respectively.

This Bench has heard the learned counsel at length and with his able assistance perused the paper book.

On a careful perusal of the communication dated 18.06.2021 (Annexure P-1), it is apparent that the Inspector of Police, Vigilance Bureau, is inquiring in complaint No.118/2019, against petitioner no.1 and others. Whenever, the Police receives an information regarding the commission of a cognizable offence, the same is required to be investigated in accordance with the procedure prescribed in Chapter-XII of the Code of Criminal Procedure, 1973. Section 156 of the Code of Criminal Procedure, 1973 provides that any officer in-charge of a Police Station shall have the power to investigate into any cognizable offence. The same is extracted as under:-

156. Police officer' s power to investigate cognizable

case.

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above- mentioned.

Sub-Section (2) of Section 156 Cr.P.C, clearly lays down that no proceedings of a police officer in any such case shall at any stage be called in question on the ground that the case is one which such officer is not empowered under this section to investigate. Still further, the instructions issued by the Government cannot supersede the provisions of the Central Act.

Still further, it is apparent from the careful reading of Annexure P-2, dated 22.02.1983, that the Government had only issued guidelines for improving the working of the Vigilance Bureau. The communication itself provides that the matter can be investigated through Home Department/CID. Thus, the Government has itself recognized that in criminal offences, the investigation is required to be carried out by the police officer in accordance with Section 156 Cr.P.C. and the same cannot be curtailed by issuing any

instructions.

Still further, the petitioners have not been called upon to provide any information. The Inspector of Police, Vigilance Bureau, Punjab, has only directed the Block Development and Panchayat Officer to depute the Panchayat Secretary with the required information. In such circumstances, this Bench does not find it appropriate to exercise its extraordinary jurisdiction to issue a writ in the nature of certiorari, at this stage. The writ petition is pre-mature.

Still further, Section 216 of the Punjab Panchayati Raj Act, 1994, deals with the civil liability. On a careful reading of Section 216 of the Act, it is apparent that whenever a member of the Panchayat is found to have caused loss, waste or misapplication of the funds belonging to the Gram Panchayat, then he shall be liable to refund the amount along with interest. Section 216 of the Act does not deal with criminal offences. Still further, Section 222 of the Act, no doubt, starts with a non-obstante provision, however, it cannot be read in a manner suggested by the learned counsel representing the petitioners. The aforesaid provision has to be read in a manner which will advance the cause of justice. It is further apparent that the provisions of the Act do not deal with criminal offences. Section 222 of the Act does not provide for exclusion of prosecution of the members of the Panchayat for criminal offences as the same falls within the exclusive domain of the criminal law which is independent and simultaneous with remedies under civil law.

The learned counsel further relies upon an instruction dated 02.01.1995. These instructions have been issued by the Rural Development and Panchayat Department under the signatures of its Director. These

instructions cannot override the statutory enabling power of investigation granted to a police officer as per Chapter-XII of the Code of Criminal Procedure, 1973.

As regards the judgments relied upon by the learned counsel, it may be noted that the Additional Advocate General had conceded before the Bench and therefore, the writ petitions were dismissed as infructuous. The aforesaid orders cannot be said to be declaring any law to the fact that the Vigilance Bureau is de-barred from investigating a criminal offence against a Sarpanch. Still further, the instructions dated 22.02.1982, Annexure P-2, refers to Sarpanches, Panches and Municipal Councilors. The petitioners, at present, are not Sarpanches. No doubt, they are Ex. Sarpanches. In the instructions, it is nowhere provided that the Vigilance Bureau cannot inquire the complaint against an Ex. Sarpanch. Still further, no FIR has been registered as yet. Hence, investigation, if any, would start thereafter.

Still further, in the considered view of this bench, the writ petition is pre-mature. At this stage, only certain information has been demanded by the Inspector of Police, Vigilance Bureau, Punjab. As of now, no action has been taken against the petitioners.

Therefore, at this stage, this Bench does not find it appropriate to exercise its writ jurisdiction.

With these observations, the writ petition is disposed of.

30th July, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No