

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-8126-2020

Date of Decision -12.10.2022

PHOOL KANWAR

...PETITIONER

VERSUS

STATE OF HARYANA & ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. R.S. Malik, Advocate  
for the petitioner  
Mr. Surender Singh, AAG Haryana

**Sandeep Moudgil, J. (Oral)**

This is a petition under section 482 Cr.P.C for quashing of FIR No. 90 dated 27.02.2019 (Annexure P-1) under Sections 409, 420, 468 and 471, of the Indian Penal Code, 1860, registered at Police Station Sadar Sonapat, District Sonapat, and all subsequent proceedings arising therefrom.

FIR against the petitioner has been lodged merely on the basis of communication dated 13-02-2019 from the office of Lokayukta. Further, as per office report, service is complete. There is no representation on behalf of respondent No.2.

Brief facts of the case are that the petitioner remained Sarpanch of Village Kami, Block Murthal, Tehsil and District Sonapat, Haryana, from the year 2010 upto June, 2015. During his tenure, as Sarpanch of the village, petitioner carried out a large number of development works in his village, and there was no complaint ever against him from any quarter of the society.

However, to the utter surprise of the petitioner, one complaint dated

05.01.2016 was allegedly filed against the petitioner by one Dharmbir before the Lokayukta, Haryana, alleging that while the petitioner remained as Sarpanch of Village Kami, he misappropriated funds and caused defects in the development of the village. On the statement of complainant, SDO Civil Ganaur vide letter No. 61 dated 29-02-2016 acting on the letter issued to him from the office Lokayukta issued a letter to the office of Executive Engineer Panchayati Raj Sonapat, Haryana for conducting enquiries regarding misappropriation, if any, done by the petitioner whereupon enquiry was conducted and it was found that during the tenure of the petitioner as Sarpanch of village Kami, petitioner had caused a financial loss of Rs. 3,05,624/- to the Gram Panchayat.

Learned counsel for the petitioner submits that with regard to allegations pertaining to petitioner's tenure from 2010 to 2015, an enquiry was conducted by the Block Development and Panchayat Officer and in pursuance thereof, the petitioner has deposited the outstanding amount, vide two receipts dated 21.03.2017 and 24.03.2017. Thereafter, (as per section 175 (o) of Haryana Panchayati Raj Act, 1994) the petitioner was directed to pay interest @ 21% for the aforesaid amount and which was deposited by the petitioner on 11.09.2018. It is thus argued that once in pursuance of the proceedings under Section 53 of Haryana Panchayati Raj Act, the petitioner has paid the entire amount, there was no occasion for the Registrar of Lokayukta to recommend for registration of criminal case against him.

It is further submitted that the Haryana Panchayati Raj Act is a complete Code, in which certain safeguards have also been provided to Sarpanch/Ex-Sarpanch, especially regarding two years limitation period for initiating proceedings under Section 52(5) of the Act, after which a person ceases to be a Sarpanch/Panch of village.

Learned counsel for the petitioner has further argued that the Registrar, Office of the Lokayukta, Haryana, while passing the order dated 02.11.2018, had, in fact, exercised the powers of Lokayukta himself, to recommend for registration of criminal case against the petitioner, without looking into the aforesaid fact that the petitioner has already deposited the entire outstanding amount, along with interest @ 21%. That pursuant to the order dated 11.07.2018, BDPO Murthal vide letter No. 2200 dated 06.09.2018, wrote to the petitioner demanding an amount of Rs. 1,49,571/-, on account of interest @ 21% from December, 2014 to March, 2017 and the petitioner was asked to deposit the said amount within 2 days from the receipt of the letter dated 06.09.2018.

It is also submitted on behalf of the petitioner that in report of the Registrar, it was observed that a criminal case for the commission of offences punishable under Sections 409, 420, 468 and 471 of IPC is required to be registered against the Petitioner/Sarpanch Shri Phool Kanwar, furthermore a departmental action is required to be taken against the Gram Sachiv, who is guilty of dereliction of duty and accordingly, recommendations are required to be made to the competent authorities.

The counsel for the petitioner further argued that the petitioner had earlier filed anticipatory bail application before this Hon'ble Court and same has been allowed by passing the detailed order in which it has been mentioned and observed by the Hon'ble Court that the affidavit filed by the Registrar Office for Lokayukta Haryana is factually incorrect. It is also observed by Hon'ble Court that the petitioner has already deposited the principal amount of Rs. 3,05,624/- on account of financial loss caused to the Gram Panchayat and also interest at the rate 21% per annum from December, 2014 to March, 2017 i.e. Rs.1,49,571/-.

Thereafter, the Hon'ble Court had granted the anticipatory bail to the petitioner. On

19.12.2019 challan was put up before the Ld. concerned court in which there was no evidence which could show that the petitioner had committed any offence under sections 409, 420, 468 and 471 of IPC. He submits that it has been specifically mentioned in the aforesaid challan that the petitioner had already deposited the principal amount of Rs. 3,05,264/- on 21.03.2017, and amount of Rs. 98,000/- on 24.03.2017 along with interest of Rs. 7264/- and thereafter on 11.09.2018 he had also deposited the interest on the aforesaid principal amount of Rs 1,49,571/-. Receipts of the aforesaid amount are on record, which would show that the aforesaid amount along with interest @ 21% p.a. period from 2014 to 2017 has already been deposited prior to the registration of the present FIR, thus, the present FIR is required to be quashed qua the Petitioner.

Learned counsel for the State on the other hand, has vehemently opposed the contentions of the counsel for the petitioner stating that final report under Section 173 Cr.P.C has already been presented against the petitioner whereby it was found that pursuant to the inquiry conducted against the petitioner on 18.01.2017, the Assistant Collector Grade II, Sonapat, issued summons for recovery of Rs.3,05,624/- and he was directed to appear in Tehsil office on 14.09.2017 as during the tenure of petitioner as the Sarpanch of village Kami, petitioner had caused a financial loss of Rs.3,05,624/-. He further stressed on the fact the petitioner had caused a huge loss to the state exchequer.

Heard learned counsel for both the sides and perused case records with their able assistance.

It is seen from the case file that the proceedings which were pending against the petitioner, were with regard to recovery for financial loss caused to the Gram Panchayat, in terms of the enquiry report of the Executive Engineer, the notices issued by the BDPO as well as the Registrar himself for recovery of the

aforesaid loss and after the principal amount along with 21% was deposited by the petitioner-Sarpanch, the Registrar, Lokayukta, while passing the order dated 02.11.2018 treated the word 'loss' as 'embezzlement' without there being any such finding in the enquiry report. Therefore, finding that the affidavits filed by the BDPO, Sonapat and the Deputy Commissioner, Sonapat are actually correct whereas the affidavit filed by the Registrar office of Lokayukta, Haryana, interpreting/treating the word 'loss' as 'embezzlement' is factually incorrect.

In view of above, it is apparent from the above circumstances that the petitioner caused financial loss only, as per enquiry report, but no finding with regard to how the embezzlement has been committed particularly in the light of the fact that principal amount of Rs.3,05,264/- alongwith 21% interest w.e.f, December, 2014 to March, 2017 i.e, Rs.1,49,571/- already stand deposited by the petitioner, and as such question of financial loss does not remain.

Therefore, the instant petition is accepted. Consequently, the impugned FIR No. 90 dated 27.02.2019 under Section 409,420,468 and 471 of Indian Penal Code,1860 registered at Police Station Sadar Sonapat, District Sonapat, and all other consequential proceedings arising therefrom, are hereby quashed, qua the petitioner.

(Sandeep Moudgil)

Judge

12.10.2022

*Poonam Negi*

*Whether speaking/reasoned Yes/No*

*Whether Reportable Yes/No*