

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

123

CRM-M-11036-2022 (O&M)
Date of Decision: 16.03.2022

GRAM PANCHAYAT, AKBARPUR KHUDAL ...PETITIONER

VERSUS

STATE OF PUNJAB AND ORS ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. P.S. Khurana, Advocate, for the petitioner.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 14.02.2017 (Annexure P-8) passed by learned JMIC, Budhlada, whereby a cancellation report dated 20.01.2017 (Annexure P-6) has been accepted.
2. A few facts, which need to be noticed briefly, are that FIR No.83 dated 14.10.2013 under Sections 420, 409, 465, 467, 468, 471, 120-B IPC was lodged at the instance of BDPO, Budhlada against Gurjant Singh, *Prabandhak* (Administrator), Akbarpur Khudal and Dimple, *Pachite Sakatar* (Panchayat Secretary) wherein allegations were levelled against them to the effect that they had embezzled an amount of Rs.13,43,238/- approximately, which was in the nature of funds of Gram Panchayat. The matter was investigated by the Police and a cancellation report (Annexure P-6) came to be filed, which was

accepted by the learned JMIC, Budhlada vide order dated 14.02.2017 (Annexure P-8), which reads as follows:

“Upon notice complainant Sanjeev Kumar BDPO appeared in the court and suffered statement that he got lodged the present case against the accused persons and now the police has filed cancellation report in this case. He agree’s with the cancellation report filed by the police. Complainant produced copy of his identity card as his ID proof which is Ex. CX. Heard. In view of the statement so suffered by the complainant, the present cancellation report is accepted. File be indexed and consigned to Judicial Record Room, Budhlada after due compliance.”

3. Learned counsel for the petitioner has submitted that Sanjeev Kumar, BDPO, who had made a statement before learned JMIC, Budhlada on 14.02.2017 expressing that he agrees with the cancellation report, had never been authorized by the department concerned to make such a statement and that he had in fact connived with the accused and, as such, the impugned order deserves to be set aside.
4. Learned counsel has further submitted that the aforesaid cancellation report came to be filed by the Police since the accused had deposited back the embezzled amount of Rs.13,43,238/-. It has been submitted that now the accused after getting a clean chit on the basis of the cancellation report has moved an application to the department concerned for refund of the amount of Rs.13,43,238/- on the basis of which an order was passed by the Director-cum-Secretary, Department of Rural Development & Panchayat, on 31.12.2021 directing the Panchayat concerned to refund the amount of Rs.13,43,238/-, which was challenged by the petitioner by way of

filing a writ petition i.e. CWP-1983-2022, which was disposed of vide order dated 07.02.2022 (Annexure P-14), wherein the following observations were made:

“On a Court question, the learned counsel representing the petitioner admits that there is no order passed by a competent authority assessing the liability of respondent No.4. Moreover, the petitioner, if so advised, has a remedy of challenging the order passed by the concerned Magistrate permitting the cancellation of the FIR. As of now, the order permitting cancellation of the FIR is in operation and the same has not been set aside by any competent Court.

Since, neither there is any order passed by the competent authority assessing the liability of respondent No.4, nor any criminal proceedings are pending against him, therefore, the Director, on the directions of the High Court, has correctly ordered the refund of the said amount.”

5. Learned counsel has submitted that since the accused had virtually admitted their guilt by depositing an amount of Rs.13,43,238/- approximately and that this Court in CWP No.1983 of 2022 vide order dated 07.02.2022 (Annexure P-14) had also made certain observations as regards challenging the impugned order dated 14.02.2017 (Annexure P-8), therefore, the impugned order deserves to be set aside.
6. I have heard learned counsel for the petitioner and have also perused the petition as well as the documents annexed therein.
7. The impugned order was passed in the year 2017 i.e. about 5 years back. Nothing is forthcoming as to why no action was taken during

the said 5 years. In these circumstances, the instant petition filed under provisions of Section 482 Cr.P.C. challenging order dated 14.02.2017 suffers from delay and laches.

8. As far as, order dated 07.02.2022 (Annexure P-14) is concerned, a coordinate Bench has merely expressed that the petitioner may challenge the order dated 20.01.2017 (Annexure P-6) in case so advised and in case he has a remedy for challenging the same while also expressing therein that there is no order of the competent authority assessing the liability of respondent No.4. In any case, since there is gross delay in challenging the impugned order, this Court does not find the present case to be a fit case for exercising inherent jurisdiction for setting aside the aforesaid order. The petition, as such, is dismissed on account of delay and laches.
9. It is, however, clarified that the aforesaid order shall not be treated as any kind of impediment for initiation of any departmental proceedings against the complainant Sanjeev Kumar, BDPO, in case, permissible under provisions of law.

16.03.2022

VY

(GURVINDER SINGH GILL)
JUDGE

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