

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

1.	CRM-M-18509-2020	
	Vinay Pratap Singh	... Petitioner
	Versus	
	State of Haryana and another	... Respondents

2.	CRM-M-19253-2020	
	Jitender Yadav and another	... Petitioners
	Versus	
	State of Haryana and another	... Respondents

3.	CRM-M-19290-2020	
	Ravi Parkash Sihag and others	... Petitioners
	Versus	
	State of Haryana and another	... Respondents

4.	CRM-M-19317-2020	
	K.Makrand Pandurang	... Petitioner
	Versus	
	State of Haryana and another	... Respondents

Date of Decision:- 19.10.2022

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. R.S. Rai, Senior Advocate with
Mr. Anurag Arora, Advocate
for the petitioners.

Mr. Deepak Sabherwal, Addl. A.G. Haryana.

Mr. Sanyam Diwan, Advocate and
Mr. Vastsal Sharma, Advocates
for respondent No.2.

KARAMJIT SINGH, J.

This order will dispose of above-mentioned four connected petitions challenging impugned order dated 3.7.2020 passed by the Court of learned Sessions Judge, Gurugram in exercise of the powers under Section 156(3) Cr.P.C vide which the criminal complaint bearing No.COMI-04/2020 dated 3.7.2020 titled as Raman Sharma Vs. K. Makrand Pandurang and others, has been sent to the Police Station Sector-10-A, Gurugram for lodging of FIR and investigation and all consequential proceedings arising therefrom qua the petitioner(s).

In CRM-M-18509-2020, the case of the petitioner-Vinay Pratap Singh is that he is a member of Indian Administrative Services and since 31.12.2019, he is discharging his duties as Commissioner, Municipal Corporation, Gurugram honestly and with utmost sincerity.

In CRM-M-19253-2020, the case of the petitioners is that petitioner No.1-Jitetnder Yadav is a serving IAS Officer and at present is posted as Administrator, Haryana Shehri Vikas Pradhikaran, Sector-14, Gurugram while petitioner No.2-Vivek Kalia is a serving HCS Officer and is

currently posted as Estate Officer-II, Haryana Shehri Vikas Pradhikaran, Infocity, Sector-34, Gurugram and are discharging their duties honestly and with utmost sincerity.

In CRM-M-19290-2020, the case of the petitioners is that petitioner No.1-Ravi Parkash Sihag is holding charge of Link Officer, Senior Town Planner, Sector-14 Gurugram; petitioner No.2-Ved Parkash Sehrawat is posted as District Town Planner (Enforcement), Gurugram and petitioner No.3-Ranndil Sher Jatinder Singh Batth is a District Town Planner (Planning & Enforcement), Gurugram and are discharging their duties honestly and with utmost sincerity.

In CRM-M-19317-2020, the case of the petitioner-K.Makrand Pandurang is that he is presently posted as Director Town and Country Planning, Haryana and is discharging his duties honestly and with utmost sincerity.

The aforesaid criminal complaint was filed under Section 156(3) Cr.P.C. by complainant/respondent No.2 against aforesaid petitioners and some other public servants and 4 private persons for the commission of offences punishable under Sections 166, 109, 188, 212, 268, 269, 278, 283, 285, 286, 287, 290, 291, 336, 337, 338, 339, 403, 406, 420, 463, 465, 467, 468, 471, 120-B IPC, Sections 3, 6, 12 of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963; Sections 250, 251, 260, 265, 39, 310, 380, 382, 384 of the Haryana Corporation Act, 1994; Sections 3, 10, 11, 12 of the Haryana Development and Regulations of Urban Areas Act, 1975; Sections 21, 22, 37, 38, 39, 40, 41, 43 of the Air (Prevention and Control of Pollution) Act, 1981; Sections

11, 15, 16, 17, 19, 25 of the Environment (Protection) Act 1986; Sections 20, 32, 33, 41, 42, 43, 44, 45, 45A, 46, 47, 48, 49 of the Water (Prevention and Control of Pollution) Act, 1974, Sections 3A, 3B of the Forest Conservation Act, 1980, Supersession of the Municipal Solid Wastes (Management and Handling) Rules, 2000; Sections 133, 143, 461 Cr.P.C.; Sections 7, 8, 11, 12, 13(1)d and 13(2) of the Prevention of Corruption Act, 1988; Sections 3 and 4 of the Prevention of Money Laundering Act, Benami Transaction Act, 2018, Benami Properties Act, 2018.

That the summary of allegations as set out in the said criminal complaint is as under:-

- i) *That a complaint regarding encroachment, illegal construction, spilling garbage, collection of stones, cement, chemicals etc. and running commercial activities on land reserved as 'Green Area' (Green Belt) in the notified 'Open Space' in Sector 94, Gurugram, was filed by the complainant on 24.6.2020 to the various Government agencies/department and police.*
- ii) *That the matter relates to illegal possession and construction of factories, warehouse, residential and commercial buildings in notified 'open space' in Sector 94, Gurugram.*
- iii) *That Sector 94, Gurugram has been notified as Open Space by the Department of Town and Country Planning in the Gurgaon-Manesar Urban Complex Plan Scheme and all kinds of constructions was banned by the said*

department. The area abutting Pataudi-Gurugram road also comes in the green belt.

- iv) That many land grabbers have raised illegal constructions in the shape of Factories, Warehouses, Residential and Commercial buildings in the said open space by violating the notification of TCP Department, provisions of Haryana Development and Regulation of Urban Areas Act, 1975, its Rules, 1976 and the Punjab Scheduled Roads and Controller Areas Restriction of Unregulated Development Act, 1963.*
- v) That the warehouses, factories and the newly constructed sites are against public policy and creating huge environmental pollution as they are throwing out the waste of their factories and warehouses in the said green area and open space and the construction sites are running without any safety measures and polluting the environment.*
- vi) That they have wrongfully got registered their GST number on the above said address and there is apprehension that they are not paying the prescribed GST.*
- vii) That the above-named companies and individuals have constructed warehouses and factories in contravention of public policy and prevailing laws and have got registered sale deeds in their favour in collusion and conspiracy with the officials and staff of the concerned Tehsil*

pertaining to the land notified under Section 7A by the TCP department.

- viii) That the said sale deeds have been registered by the vendors in collusion with the Sub-Registrar/Naib-Tehsildar, deed writers, witnesses, officials and staff of the concerned Tehsil by misusing their officials powers and by doing many other crimes.*
- ix) That the said sale deeds for the area belonging to the Sector-94 are registered illegally and in contravention of the laws.*
- x) That as per the aforesaid provisions and notification of the TCP department, the land can only be transferred in the name of the other person with the prior permission from the said department but the Naib Tehsildar/Sub Registrar concerned have registered the sale deeds by ignoring the aforesaid provisions and notifications by mentioning wrong details and facts in the sale deeds.*
- xi) That the said violations are visible on the spot and the accused persons are habitual offenders for violating the laws and orders of the TCP department and other laws and are involved in corruption, benami property and money laundering and other related offences and it is causing great loss to the state ex-chequer.*
- xii) That from the above said facts it is clear that the accused persons are responsible for land grabbing of public land, public nuisance, endangering human life, conspiracy*

against state, illegally gaining money, laundering of illegally gained money, corruption.

xiii) That the State officials are supporting the aforesaid illegal acts. The State has a patent conflict of interest in addressing the issues as the State cannot be a judge for its own serious acts of omission and commission.

xiv) That the culprits have political patronage, that is why the local police are under their pressure and the administration is not taking any action against the above criminals.

xv) That the investigation is very much necessary to resolve the matter, as the matter relates to public at large and state itself.

xvi) That despite numeral requests, no FIR has been lodged by the Police so far despite the seriousness of the crime. The police has displayed lackadaisical and partisan attitude, warranting the interference of this Hon'ble Court. Hence the complaint before this Hon'ble Court."

Notice of motion was issued to respondents vide order dated 13.7.2020 and consequently the respondents put in their appearance through their respective counsel.

I have heard the counsel for the parties.

The counsel for the petitioner(s) submitted that admittedly the petitioner(s) are public servants and per the provisions of Section 19 of the Prevention of Corruption Act, 1988, no Court can take cognizance of offences punishable under Sections 7, 11, 13 and 15 of the said Act without

previous sanction of the Central Government/State Government as the case may be. The counsel for the petitioners further contended that in case relating to Sections 3 and 4 of Prevention of Money Laundering Act no police officer can investigate into an offence under the said Act unless specifically authorized/by the Central Government by a general or a special order and subject to such conditions as may be prescribed. The counsel for the petitioners further contended that in case of offences punishable under Sections 3, 10, 11 and 12 of Haryana Development and Regulations of Urban Areas Act 1975, no prosecution for any offence punishable under the said Act shall be instituted except with the previous sanction of the Director or any officer authorized in writing by him in this regard. The counsel for the petitioners further contended that similarly for prosecution of a person under Sections 3, 6 and 12 of the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development) Act, 1963 previous sanction of the Director or any officer authorized in writing by him on his behalf is required. The counsel for the petitioners further brought to the notice of this Court that no Court can take cognizance of offences punishable under Sections 21, 22, 37, 38, 39, 40, 41 and 43 of the Air (Prevention and Control of Pollution) Act 1981 except on a complaint made by a Board or any officer authorized in this behalf by or by any person who has given 60 days prior notice, in the manner prescribed. The counsel for the petitioners also apprised this Court that so far as offences punishable under Section 11, 15, 16, 17, 19 and 25 of the Environment (Protection) Act 1986, no Court shall take cognizance of offence under this Act except on a complaint made by the Central Government or any authority of officer authorized in this behalf by

the Government or by any person who has given 60 days prior notice, in the manner prescribed.

The counsel for the petitioner(s) has further contended that in the same manner the Court cannot take cognizance of offences under Sections 20, 32, 33, 41, 42, 43, 44, 45, 45(A), 46, 47, 48 and 49 of the Water (Prevention and Control of Pollution) Act 1974 except on a complaint made by a board or any officer authorized in this behalf by or by a person who has given 60 days prior notice, in the manner prescribed.

The counsel for the petitioner(s) has further submitted that the Court cannot take cognizance of offences under Sections 250, 251, 260, 265, 309, 310, 380, 382 and 384 of Haryana Municipal Corporation Act, 1994 except on the complaint of or upon information received from the Commissioner or any other officer or the Corporation authorized by it in this behalf. The counsel for the petitioner further contends that no *prima-facie* offence is made out against the petitioner under Sections 107, 109, 120-B, 166, 167, 168, 379, 381, 406, 409, 411, 413, 415, 417, 420, 463, 464, 465, 466, 468, 469, 470, 471, 474 IPC. The counsel for the petitioners further submits that with regard to the other offences covered under IPC, the provisions of Section 197 Cr.P.C. are attracted and as such cognizance cannot be taken by Court except on a complaint made by the concerned public servant or by officer to whom he is subordinate.

The counsel for the petitioner(s) further contended that the impugned order is totally illegal being passed without an application of mind by the Court below. The counsel for the petitioner referred to **Maksud Saiyad Vs. State of Gujrat and others (2008) 5 SCC 668**, wherein it was

observed that where a jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C. the Magistrate is required to apply his mind as summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The magistrate has to fully scrutinize the allegations brought on record.

The counsel for the petitioner(s) further contended that in the instant case the complaint moved under Section 156(3) Cr.P.C was not accompanied by a sanction order of the competent authority and as such the impugned order deserves to be set aside in the light of the law laid down by the Hon'ble Apex Court in ***Anil Kumar Vs. M.K Aiyappa and another, (2013)10 SCC 705.***

As per the counsel for the petitioners, all the allegations leveled in the aforementioned criminal complaint pertains to Sector-94, Gurugram which falls under the jurisdiction of GMDA and is outside the municipal limits of municipal corporation, Gurugram and as such, the said criminal complaint is not maintainable against the petitioners.

The counsel for the petitioners further contended that the impugned complaint has been filed by the complainant in the nature of public interest litigation, without showing his credentials. That the complainant has *ex-facie* failed to show his *locus-standi* and as to how he has been prejudiced by the alleged acts of the accused persons. The counsel for the petitioners while concluding his arguments, urged that the impugned order being passed by the Court below in a casual manner without assigning any reasons, deserves to be set aside.

The counsel appearing on behalf of the State has also assailed the impugned order and adopted the arguments advanced by the counsel for the petitioners.

While refuting the aforesaid assertions, the counsel for respondent No.2 has submitted that there is no illegality or perversity in the impugned order, which has been passed by the Court concerned in accordance with law after proper application of mind. The counsel for respondent No.2 further submitted that complainant/respondent No.2 is resident of Gurugram and is being aggrieved by the illegal constructions being raised by the land grabbers and builders in violation of the different statutory provisions as are fully detailed in the head-note of the complaint and the public servants who are impleaded in the complaint as respondents, have failed to take notice of the aforesaid illegal activities being carried out with impunity by the builders and land grabbers. The counsel for respondent No.2 further contended that respondent No.2 has got *locus-standi* to file the complaint in question. The counsel for respondent No.2 further contended that no ground is made out for interference on behalf of this Court.

I have considered submissions made by counsel for the parties.

The impugned order reads as follows:-

“Criminal complaint for commission of offences punishable under sections 166, 109, 188, 212, 268, 269, 278, 283, 285, 286, 287, 290, 291, 336, 337, 338, 339, 403, 406, 420, 463, 465, 467, 468, 471, 120-B of Indian Penal Code, 1860, 3,6, 12 of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, 250, 251, 260, 265, 309, 310, 380, 382, 384 of the Haryana Municipal Corporation Act, 1994, 3, 10,11 and 12 of the Haryana Development and Regulations of Urban Areas Act, 1975, 21,22, 37, 38, 39, 40, 41 and 43 of the Air (Prevention and Control of Pollution) Act, 1981,

11,15, 16,17, 19 and 25 of the Environment (Protection) Act, 1986, 20, 32, 33,41, 42,43,44, 45, 45-A,46,47, 48 and 49 of the Water (Prevention and Control of Pollution) Act, 1974, 4-A, 3-B of the Forest Conservation Act, 1980, Supersession of the Municipal Solid Waste (Management and Handling) Rules, 2000, 133, 143, 461 of the Code of Criminal Procedure, 1973, 7, 8, 11,12, 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988, 3, 4 of Prevention of Money Laundering Act and Benami Transaction Act, 2018, has been presented today. It be checked and registered. Complainant and learned counsel for the complainant made the following statement:

“I do not intend the registration of F.I.R. against accused Nos. 1, 5, 6, 7, 8 and 9. However, if the investigating agency is able to gather any evidence against them, it may take its own conscious decision about their prosecution.”

Heard. It was argued by the learned counsel for the complainant that most of the offences were committed within the territorial jurisdiction of Police Station, Sector-10A, Gurugram.

In view of the facts incorporated in the complaint coupled with documents which have been enclosed with the complaint, this Court finds that the matter needs to be investigated for which lodging the F.I.R. is sine qua non. Hence, the present complaint is sent to Police Station, Sector-10A, Gurugram, for lodging the F.I.R. and investigation. A photocopy of the file be retained by the Ahlmad. File be sent immediately.”

As has been rightly pointed out by the counsel for the petitioner(s), no Court can take cognizance of offences punishable under Sections 7, 11, 13 and 15 of Prevention of Corruption Act, 1988 against the public servants without previous sanction of the concerned Government. Similarly, the police cannot investigate offences punishable under Sections 3 and 4 of Prevention of Money Laundering Act unless specifically authorized by the Central Government in this regard. Sanction is required to prosecute the public servants under various provisions of Haryana Development and Regulations of Urban Areas Act, 1975 and Punjab Scheduled Roads and

Controlled Areas (Restriction of Unregulated Development) Act, 1963. Further no Court can take cognizance of offences punishable under the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act 1986; the Water (Prevention and Control of Pollution) Act, 1974 except on a complaint made by a Board or any officer authorized in this behalf. Further, the Court cannot take cognizance of offences under Haryana Municipal Corporation Act, 1994 except on the complaint made by the competent authority.

In the instant case, no prior notice was issued by respondent No.2 to prosecute the petitioners as is required under Air (Prevention and Control of Pollution) Act, 1981; the Environment Protection Act, 1986 and the Water (Prevention and Control of Pollution) Act, 1974. Further, the police cannot take cognizance of offences punishable under Sections 3 & 4 of Prevention of Money Laundering Act unless specifically authorized by the Central Government by general or a special order. In the instant case, respondent No.2 has failed to produce copy of any such general or special order passed by the Central Government.

Undoubtedly Special Judge is deemed to be a Magistrate under Section 5 (4) of Prevention of Corruption Act, 1988 and therefore clothed with all the Magisterial Powers provided under Cr.P.C. However, as per provisions of Section 19 of the said Act, the Court cannot take cognizance of offences under Sections 7, 11, 13 and 15 of the said Act without previous sanction of the concerned Government.

The counsel for the petitioners has raised the argument that in the absence of any sanction order of competent authority, the learned

Sessions Judge was not empowered to pass the impugned order and in support of his arguments, the counsel for the petitioners has placed reliance upon **Anil Kumar's** case (supra). In the said case, identical question had fallen for consideration i.e. whether sanction under Section 19 of the Prevention of Corruption Act, 1988 is pre-condition for ordering investigation against a public servant under Section 156(3) Cr.P.C. even at pre-cognizance stage. The Hon'ble Supreme Court answered the said question in the affirmative. However, subsequently in **Manju Surana vs. Sunil Arora, (2018) 5 SCC 557**, the question, of whether any such direction under Section 156(3) of Cr.P.C. can be issued without prior sanction, has been referred to a larger bench by the Hon'ble Supreme Court. However while making said reference to a larger bench, the Hon'ble Supreme Court did not declare the ratio laid down in **Anil Kumar's** case (supra) as per incuriam or a bad law.

In the light of the ratio of **Anil Kumar's** case (supra), this Court is having no hesitation to hold that an order directing investigation under Section 156(3) Cr.P.C. cannot be passed in the absence of a valid sanction under Section 19 of the Prevention of Corruption Act, 1988.

It is settled law that even at the stage of Section 156(3) Cr.P.C., while directing an investigation, there has to be an application of mind by the Magistrate. The Court concerned cannot act in a mechanical and mindless manner. The application of mind should be reflected in the order. From the perusal of the impugned order, which has been reproduced above, it appears that the Court concerned passed the said order without due application of mind, just in a mechanical manner. The mere statement, that

he (Presiding Officer) has gone through the complaint, documents and heard the complainant as reflected in the impugned order will not be sufficient and on this sole ground the impugned order being vitiated, deserves to be set aside.

Having regard to the subject matter by way of which the complainant has attempted to invoke the provisions of Section 156(3) Cr.P.C. against the petitioners (the public servants), a valid sanction/approval as per law would be required before proceeding further in the matter. Admittedly, in the case in hand, no such previous sanction/approval has been sought by the complainant to prosecute the petitioners.

Consequently, the impugned order dated 3.7.2020 being illegal is hereby set aside qua the petitioners. The petitions stand allowed.

(KARAMJIT SINGH)
JUDGE

19.10.2022
Gaurav Sorot/P.Chawala

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No