

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CR No.2347-2020(O&M)
Date of decision dated 22.11.2022

Rajdeep Kaur

.....Petitioner

vs.

Davinder Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Ajiteshwar Singh, Advocate, for the petitioner.

Mr. Abdul Aziz, Advocate, for
Mr. Mohd. Yousaf, Advocate, for respondent No.1.

HARKESH MANUJA, J (Oral)

By way of present revision petition, challenge has been made to an order dated 27.02.2020 passed by the Court of learned Civil Judge (Jr. Divn.), Jalandhar, whereby an application under Order VII Rule 11 (d)CPC, filed at the instance of petitioner-defendant No.1 seeking rejection of plaint being barred by law has been rejected.

The facts leading to the present case are that a suit for recovery of damages on account of malicious prosecution and defamation came to be filed at the instance of respondent/plaintiff against the petitioner and the proforma respondents. It was averred in plaint that based on the resolution dated 16.08.2009 passed by the Gram Panchayat, to which the petitioner/defendant happens to be a Sarpanch, an FIR No.322 dated 28.09.2009 under Sections 427 and 447 IPC, alleging unauthorized occupation of respondent No.1/plaintiff over panchayat land was registered at Police Station Lambra, District Jalandhar. It was

stated that the respondent No.1 was acquitted of the charges vide judgment dated 07.01.2017 passed by the Court of learned Judicial Magistrate 1st Class, Jalandhar and the said order was even affirmed by the Court of learned Additional Sessions Judge, Jalandhar, vide judgment dated 25.08.2017. It was further averred that false FIR was registered against the respondent No.1/plaintiff with an idea to lower his prestige in the estimation of his friends, relatives, based thereupon a claim for recovery of damages for malicious prosecution and defamation was made.

Petitioner-defendant No.1 moved an application under Order VII Rule 11 (d) CPC with a prayer for rejection of plaint on account of it being barred by law. Reliance was placed upon Sections 16, 22 & 218 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as “an Act”) so as to contend that the resolution dated 16.08.2009 was passed by the Gram Panchayat to which the petitioner happened to be Sarpanch, in discharge of duties as regards removal of encroachments on public properties and the said act was thus protected under Section 218 of the Act, and as such, no suit, prosecution or other legal proceedings could have been maintained in this regard by respondent No.1/plaintiff.

The application filed at the instance of petitioner was pressed by respondent No.1/plaintiff by filing his objection to the same. The trial Court vide order dated 27.02.2020 dismissed the aforesaid application and it is the said order which has been impugned by way of present revision petition. It has been contended on behalf of the

petitioner that Sections 16 and 34 of the Act, empower the Sarpanch to act in furtherance of removal of encroachments from public properties and as the act of passing of resolution as well as registration of FIR against respondent No.1 was done in discharge of his duties enumerated therein, no suit, prosecution or other legal proceedings could have been maintained by respondent No.1/plaintiff, based thereupon, in view of the specific bar prescribed under Section 218 of the Act. In this regard, learned counsel places reliance law laid down by Hon'ble the Supreme Court in the case of **State of Madhya Pradesh and others Vs. Bachha Lal and another, 2007 (6) SCC 52**. Learned counsel for the petitioner further submits that as the aforementioned action of the petitioner was based on resolution dated 16.08.2009 passed by the gram panchayat, it has to be considered as an Act done by him in good faith being in discharge of his duties under the Act. He also submits that for the purpose of interpreting Section 218 of the Act, the words used therein as "good faith done" or "intended to be done" or "purported to be done" have to be read separately & distinctively for the purpose of upholding the real intent of the legislature of providing protection enjoined therein.

On the other hand, learned counsel for respondent No.1/plaintiff submits that the action of petitioner/defendant No.1 which was based on mere passing of a resolution for the purpose of removal of encroachment without being supported by any order of eviction passed by any competent authority, cannot be said to be an act done in good faith on his part. He also submits that even in the trial arising out of FIR No.322 of 2009, the petitioner/defendant No.1 who appeared as PW-3

was not able to produce any order passed by any competent authority showing any adjudication as regards the unauthorized occupation of respondent No.1/plaintiff over any of the Panchayat's property.

I have heard learned counsel for the parties and gone through the paper book. Sections 16 & 218 of the Act which are relevant for the purposes of determination of controversy involved herein are reproduced hereunder.

Section 16 :- Powers, functions and duties of Sarpanch.

(1) The Sarpanch shall

(a) be responsible for convening the meet~ of the Gram Sabha and preside over Its meetings;

(b) be responsible for convening the meetings of the Gram Panchayat and shall preside over its meetings;

(c) be responsible for the maintenance of the records of the Gram Panchayat;

(d) have the general responsibility for the financial and executive administration of the Gram Panchayat;

(e) exercise administrative supervision and control over the work of the staff of the Gram Panchayat and the officers and employees whose service may be placed at the disposal of the Gram Panchayat by any other authority;

(f) for the transaction of business connected with this Act or for the purpose of making any order authorized thereby, exercise such powers, perform such functions and discharge such duties as may be exercised, performed or discharged by the Gram Panchayat under this Act or the rules made thereunder:

Provided that the Sarpanch shall not exercise such powers, perform such functions or discharge such duties as may be required by the rules made under this Act to be exercised, performed or discharged by the Gram Panchayat at a meeting;

(g) exercise such other powers, perform such other duties as the Gram Panchayat

may, by general or special, resolution, direct or as the State Government may by rules made In this behalf, prescribe.

Section 218 :- Protection of action in good faith.

No suit, prosecution, or other legal proceedings shall be brought against a Panchayat or any of its officers or employees duly appointed or otherwise in respect of anything which is in good faith done or intended to be done or purporting to be done under this Act or any rule or regulation or bye-law made thereunder."

From a perusal of the provisions reproduced hereinabove, I do not find substance in the submissions made on behalf of petitioner. The submission made on behalf of the petitioners to the effect that the text of Section 218 "**...which is in good faith done or intended to be done or purporting to be done under this Act ...**" shall be interpreted as

"...which is in

- i) good faith done or
- ii) intended to be done or
- iii) purporting to be done .."

are without any merit and requires to be rejected.

In my considered opinion this is not the correct interpretation. "Good faith" here is a qualifier which precedes and qualifies all the subsequent text and therefore, in my view, it shall be interpreted as :-

"...which is in good faith

- iv) done or
- v) intended to be done or
- vi) purporting to be done .."

"Good faith" is the essence of protection provided under this provision and it cannot be said that legislature intended that even the

mala fide acts “intended to be done” or “purported to be done” would have the protection of this provision and thus any interpretation to the contrary would travel against the intent of the legislature. This interpretation is further strengthened from the heading of Section 218 of the Act (**“Protection of action in good faith”**) as well, which makes it clear that the protection against filing of the suit, prosecution or other legal proceeding has been granted to Panchayat or any of its officers or employees duly appointed, only in respect of actions which are done in “good faith”. It is also settled law of interpretation that any text of statute has to be interpreted in a manner which extends the object and purpose of the act. In case, the said provision is read interpreted and implemented, as being projected at the instance of petitioner, the object and purposes of the provisions would be frustrated, which on the face of it provides protection of action done in good faith only.

Now we need to apply the above mentioned interpretation in the factual matrix of the case. FIR no. 322 dated 28.09.2009 was filed against the respondent no.1/defendant merely on the basis of a resolution dated 16.08.2009 passed by the Gram Panchayat. There is no doubt that the Sarpanch has been empowered, under Section 16 read with Section 34 of the Act, for the purpose of removal of encroachments over the public properties. However, besides passing a resolution dated 16.08.2009, no legal proceedings for its enforcement were ever initiated either before any Judicial or quasi-Judicial authority at the instance of petitioner/defendant No.1 or the Gram Panchayat, under any of the

statutory remedies available with them so as to get an adjudication done as regards the alleged unauthorized occupation of respondent No.1-plaintiff.

At this stage it would also be appropriate to look at the language of the Section 34 as well :-

“34. Power to require removal of encroachments and nuisance. (1) A Gram Panchayat either suo moto or on receiving a report or other information and on taking such evidence, if any, as it thinks fit, may make a conditional order requiring within a time to be fixed in the order.”

A perusal of the language of Section 34 shows that an obligation has been casted upon Gram Panchayat that before taking any action to remove encroachments and nuisance, it shall proceed only after taking such evidence (if any) as it deems fit, however in this case no such effort in this regard was made.

Therefore, in the facts and circumstances of the present case, respondent No.1 defendant, has been able to prima facie show that the action of petitioner/defendant No.1 was not in good faith, and if the petitioner claims the protection of Section 218 of the act, the burden will be on him to prove that the act was done in “good faith” by taking appropriate pleadings in the written statement and bringing on record sufficient admissible evidence in this regard and therefore learned Trial Court was right in dismissing the application filed at the instance of the petitioner/defendant No.1, under Order VII Rule 11 (d) CPC and as such the plaint filed by respondent No.1-plaintiff cannot be rejected at this preliminary stage, in the facts & circumstances of the present stage.

The reliance placed upon by learned counsel for the petitioner to the case titled as **State of Madhya Pradesh and others Vs. Bachha Lal**

& another (supra) may also not help her cause in the present case, Hon'ble Supreme Court, in this case was dealing with Section 48 of the Madhya Pradesh General Sales Tax Act, 1958 which is reproduced below for reference:

"(1) No suit, prosecution or other proceedings shall lie against any officer or servant of the State Government for any act done or purporting to be done under this Act, without the previous sanction of the State Government.

(1-a) No officer or servant of the State Government shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of the execution of duties imposed on him or the discharge of function entrusted to him by or under this Act.

(2) No suit shall be instituted against the State Government and no prosecution or suit shall be instituted against any servant of the State Government in respect of any thing done or intended to be done under this Act unless the suit or prosecution has been instituted within three months from the date of the act complained of:

(Provided that in computing the period of limitation under this sub-Section, the time taken for obtaining sanction under sub-Section (1) shall be excluded.)"

A comparative reading of Section 218 of the Act as well as Section 48 of the Madhya Pradesh General Sales Tax Act, 1958, makes it clear that the language used by the legislature and its intent in both the provisions is totally different. As observed by the Hon'ble Apex Court, under Section 48 of the Madhya Pradesh General Sales Tax Act, 1958, in view of second condition in section 48(1-a) i.e. "acts done in discharge of function entrusted under the Act", an absolute protection has been provided to an officer or servant of the State Government from filing of any suit, prosecution or other proceedings against him, whereas, the protection provided under Section 218 of the Act is only as regards the action done in "good faith" and no independent condition provides any absolute protection, which is the substantial distinction and difference

and therefore this case is not applicable to the facts and circumstances of the present dispute.

Another contention is also made on behalf of the petitioner that no foundation has been laid at the instance of respondent No.1/plaintiff in his entire plaint so as to contend that the action of the petitioner/defendant No.1 was not in good faith. This contention is also liable to be rejected in view of the averments made in para No.8 of the plaint, wherein, the respondent No.1/plaintiff specifically states that the entire action of petitioner-defendant No.1 was with a motive to lower the prestige of the plaintiff in the estimation of his friends, relatives. Besides it, the averments made in the plaint are yet to be proved during the trial. More than that, the primary burden to draw benefit of protection available under Section 218 shall always be upon the petitioner/defendant No.1 by proving that the Act was done in “good faith” which shall always be a matter to be adjudicated upon in the suit.

In view of the discussion made hereinabove, the revision petition is hereby dismissed upholding the order passed by the trial Court dismissing the application filed under Order 7 Rule 11 CPC.

At this stage, learned counsel or the petitioner/defendant No.1 prays for 30 days time for the purpose of filing of his written statement.

Considering the facts and circumstances of the present case, especially the pendency of the present revision petition, the petitioner/defendant No.1 shall be at liberty to file written statement within a period of 30 days from today besides, filing of any other

application if so, advised so that she may defend her rights in an effective manner and may not suffer any prejudice for want of her defence in the suit.

However, it is made clear that the observations made hereinabove may not be construed as an expression of opinion on merits of the case in hand.

Pending applications, if any, stand disposed of.

22.11.2022
anil

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>