

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

243

CWP-19339-2020

Date of decision: 05.12.2022

YOGESH SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. S.S. Aviraj, Advocate for
Mr. Onkar Singh, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Article 226 of the Constitution of India for the issuance of a writ in the nature of Mandamus directing the respondent-authority to restrain the respondent No.5 from harassing the petitioner and his partners.

Briefly summarized the facts of the present case are that the petitioner alleged that he alongwith his partners had installed a stone crusher under the name and style of M/s Beas Stone Crusher at Village Nalunga, Tehsil & District Pathankot in the year 2016 and the same has been running according to the terms and conditions of the Mining Department.

It is alleged that the Mining Officer-respondent No.5 Gagan son of Kulvir Singh had been appointed in the District to check the theft and other illegal activities related to the sand and other minerals. He, however, in connivance with criminal elements started harassing proprietor of the crushers and the public at large. A false FIR

No.09 dated 05.07.2018 was registered against the petitioner and his partners at the behest of respondent No.5 against which an application had been submitted to the Senior Superintendent of Police, Pathankot. A prayer has been made that the petitioners are being harassed at the behest of respondent No.5 and thus, action be taken against him.

Reply by way of affidavit of Rajinder Singh, Deputy Superintendent of Police, City Pathankot on behalf of respondents No.1, 3 and 4 has been filed.

It is evident from a perusal of the above, that a cancellation report was initially submitted in the FIR wherein the respondent No.5 filed his protest.

The matter was thus sent by the Illaqa Magistrate for investigation. During the course of the investigation it was found that that the Crusher namely M/s Beas Stone Crusher situated at village Nalunga (the stone crusher of the petitioner) was not having any consent to operate from the Pollution Board after 12.08.2015. The said crusher was also not registered with the Department of Mines. The challan was thereafter presented against the petitioner before the Illaqa Magistrate and it has been informed by learned State counsel on instructions from ASI Sunder Singh that charge against the petitioner has also been framed.

A separate written statement on behalf of respondent No.5 has also been filed wherein various preliminary objections and submissions have been raised.

It has been averred in the said reply that the petitioner was operating the stone crusher without necessary approvals whereupon

FIR No. 09 dated 05.07.2018 was got registered at the instance of respondent No.5 in which chargesheet has already been filed and charge has been framed. He contends that insofar as any other dispute is concerned, the petitioner would have his remedies under the Punjab Minor Minerals, Rules 2013 and to approach the competent authority. It is submitted that the petitioners are indulging in illegal mining activity and that the institution of the present petition is only to pressurize the officials to not undertake their statutory duties.

I have heard learned counsel appearing on behalf of the parties and have gone through the documents appended alongwith the instant petition.

It is evident from a perusal of the responses filed way back in the February, 2021 that the FIR in question has been duly registered and charge-sheet filed against the petitioner. No rejoinder/counter affidavit to the said averments had been filed. It cannot thus be assumed that the respondent No.5 has acted in any illegal manner. Apparently, he has been acting in discharge of his official duties and performing his functions.

Grievance of a person arising out of lawful discharge of duties, cannot be the basis for initiation of proceedings against such public servant. An allegations of malice cannot vitiate an action which is otherwise as per law.

The present petition is hence misconceived and is accordingly disposed of as not pressed at this stage with liberty to the

petitioner to take recourse to the remedy available to him in accordance with law.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 05, 2022

Vishal sharma

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