

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-4198-2020
Date of decision : 16.10.2023

Vikram Singh

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. R.S. Sangwan, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

PANKAJ JAIN, J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks quashing of FIR bearing No.0370 dated 19.09.2017, registered for offences punishable under Sections 420, 409, 181, 167 and 120-B of IPC at Police Station City Dadri.

2. Counsel for the petitioner relies upon communication dated 23.04.2018 and that dated 17.05.2019. FIR was registered on the communication received from Additional Secretary, Government of Haryana dated 01.06.2017. However, vide communication dated 06.04.2018, FIR was sought to be cancelled and to that effect Engineer-in-Chief PWD(B&R) was requested to direct the concerned Executive Engineer to take up the matter earnestly with the concerned police authorities for taking appropriate steps for cancellation of FIR. Communication dated 06.04.2018 reads as under:-

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From

The Addl. Chief Secretary to Government of
Haryana
Department of Public Works (B&R) &
Architecture

To

The Engineer-in-Chief
Department of Public Works (B&R)
Chandigarh.

Memo No.04/26/2016-6 B&R (W)

Dated, Chandigarh 06/04/2018

**Subject:- Regarding cancellation of FIR
against Sh. Vikram Singh, Beldar in
connection fraud with HBA.**

Reference of Govt. of even no dated 31/08/2017
on the subject noted above.

Government has further observed that Sh. Vikram Singh, Beldar had applied for HBA for construction of a house over a plot for which a plan etc. was submitted alongwith the application. Accordingly, loan was sanctioned to him by the department for Rs.1,43,200/-. Later on, it transpired that he has started constructing the house over another plot instead of the plot for which he has submitted the plan. The matter was enquired during which it has come to the notice that the plot which he had mentioned at the time of sanction of loan was not in the individual's name being inherited property. Some dispute had arisen over the plot between siblings. Then, after sanction of loan Sh. Vikram Singh, Beldar purchased another plot vide a registered sale deed near the old plot and started construction of the house. In the mean while department has got registered an FIR against the employee for intentionally submitting false documents to secure the HBA fraudulently.

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The said employee has represented against the said action of the department whereby FIR has been registered. On examination of the matter it has been further observed that the office has itself recorded that in case the employee wants to change the plot then he should have sought the permission of the department but he failed to do so therefore FIR may be registered. Thus, it is clear that this lapse can be an irregularity for which the employee can be proceeded departmentally. There is no intention on the part of the employee to misuse/embezzle the loan sanctioned to him nor there is any criminal intent to defraud the department since he has mortgaged his land not in the name of the Government after getting sanction of the loan.

You are, therefore, requested to direct the concerned Executive Engineer to take up the matter earnestly with the concerned police authorities to taking appropriate steps for cancellation of FIR as per law and may proceed departmentally against Sh. Vikram Singh, Beldar.

Sd/-
Superintendent B&R (W)
For Addl. Chief Secretary to Government, Haryana
Public Works Department
Dated Chandigarh.”

3. The same was followed by another communication dated 23.04.2018 received from the Office of Superintending Engineering, Haryana PWD (B&R), wherein reference was made to an enquiry made by the authorities asking for cancellation/withdrawal of the FIR. The same was again followed by communication dated 17.05.2019.

4. Reply by way of affidavit of Virender Singh, HPS, Deputy Superintendent of Police, HQ. Charkhi Dadri has been filed, wherein the

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stand taken by the prosecution has been culled out as under:-

“1. That relevant facts of the case in succinct are that a case FIR No. 370 dated 19.09.2017 under sections 420,409,181,167,120-B IPC PS City Dadri was registered on a letter No. 4/26/16-6BR(W) sent by the Additional Chief Secretary, Public Works Branch (B&R), Chandigarh addressed to Engineer-In-Chief, Public Works (B&R), Haryana, Chandigarh mentioning a complaint submitted against petitioner Vikram Son of Balwant Singh Beldar regarding committing fraud in House Building Advance Loan, issuing directions that after considering the matter Government has observed that being a Government official Vikram son of Balwant Singh Beldar working in Provincial Division, Charkhi Dadri has committed a serious crime by obtaining house building advance from PWD B&R Department on fake affidavit and on false documents. The accused /petitioner has not constructed his house up to DPC level but has given utilization certificate for obtaining the next installment of his house loan amount after colluding with the local village Nambardar and Patwari. Further it was allege that his father Balwant Singh also is a party in the crime and no recovery of the loan has been by the department from Vikram Singh Beldar. Therefore, the Government has decided to lodge an FIR against Vikram Singh Beldar, his father Balwant Singh, Nambardar and Halqa Patwari for cheating and misappropriation of government money. Upon receipt of above mentioned letter, instant case FIR was registered and investigation commenced.

2. That during the course of investigation, it was found that the petitioner while posted as Beldar in

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PWD (B&R), Charkhi Dadri applied for house building advance from the State Government submitting a site plan of ancestral land and thus was sanctioned a loan amounting Rs. 3,58,000/- by the Government and the petitioner was released first installment of the loan amounting Rs. 1,43,200/- for completion of the house up to DPC level. The petitioner submitted a false affidavit that he has completed the work of construction of house up to DPC level and requested for release of second installment of loan. During investigation, it was found that the said plot of land upon which construction was being shown does not belong to the petitioner and no construction was carried out as undertaken in the utilization certificate. Accordingly, petitioner Vikram, his father Balwant and Gungan Nambardar were arrested in the case. Halqa Patwari was found innocent in the matter. After completion of investigation, challan has been submitted in the learned Court against petitioner Vikram, his father Balwant and Gungan Nambardar in the learned Court on 18.06.2021 and the same is now fixed for 28.07.2023 for framing of charges against the petitioner and co-accused.

3. That the respondent No. 4 is not a competent authority to withdraw the case after submission of challan and during investigation no valid directions from the State Government were issued to the investigating agency for cancellation of FIR. Hence, the present petition is liable to be dismissed.”

5. State counsel however does not dispute communication dated 06.04.18, 23.04.2018 and that 17.05.2019. Thus, the question is once the Government has made an enquiry and has come to the conclusion

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that in fact there is no embezzlement and has sought cancellation of FIR that too at the level of Additional Chief Secretary, whether the present criminal prosecution can be allowed to continue?

6. In the considered opinion of this Court, once enquiry conducted by the authorities have found the petitioner innocent and have exonerated the criminal proceedings wherein the standard of proof is much higher i.e. beyond reasonable doubt are not going to result in prosecution more so when the authorities are repeatedly asking for withdrawal/cancellation of FIR.

7. In view of above, present petition is allowed. FIR No.0370 dated 19.09.2017, registered for offences punishable under Sections 420, 409, 181, 167 and 120-B of IPC at Police Station City Dadri and all proceedings subsequent thereto are ordered to be quashed.

(PANKAJ JAIN)
JUDGE

16.10.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No