

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211

CWP-18007-2017 (O&M)
Date of Decision :-13.09.2023

Krishan Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sunil K. Nehra, Advocate for the petitioner.

Mr,. Harish Rathee, DAG, Haryana.

Mr. Rupinder Rana, Advocate for
Ms. Swati Dayalan, Advocate for respondent No.4.

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Harsimran Singh Sethi, J. (Oral)

1. Present petition has been filed challenging order dated 04.08.2017 (Annexure P/10), by which, a direction was given by the Director State Transport, Haryana to the General Manager Haryana Roadway, Panipat to get an FIR registered against the petitioner keeping in view the report submitted by the committee headed by the Chief Accounts Officer and the further challenge is to the order dated 03.05.2017, by which the petitioner was placed under suspension.

2. Certain facts need to be mentioned for the correct appreciation of the issue in hand.

3. The petitioner joined as Conductor in the State of Haryana at

Sonepat on 10.09.1989. Thereafter the petitioner got promoted as sub-inspector in the year 2012. In the year 2015, an audit objection was raised in regard to the advance payment which has been given to the employees for being utilized for the payment of the monthly toll tax and certain irregularities were noticed qua utilization of said advanced payments. Keeping in view the said audit objection, explanation of the petitioner was called for as the petitioner had taken advances finances for the payment of the monthly toll tax, which was required to be accounted for on the basis of the record to prove that the advance finances received have been used properly for the purpose for which, they were issued. Thereafter, a compliant was also received in the office of the transport department making allegations that the amount which is being taken as advances for the payment of toll tax is being misutilized and certain instances were also mentioned in the said complaint to substantiate the allegations. The Director State Transport, Haryana in order to verify the said allegations constituted a committee of four personnel to examine the record of the Panipat depot relating to the deposit of the toll tax, payment of permit fee, receipt of toll tax, AG Audit Para, advances, period of advances, record of building clerk and rent register etc. so as to make detailed report within a period of one week.

4. In the meantime, the petitioner who was working as Sub Inspector in Haryana Roadways Panipat was placed under suspension vide order dated 03.05.2017.

5. The committee constituted vide order dated 29.05.2017 modified on 21.06.2017 and though, initially the committee was constituted of four members but the same were increased to seven vide order dated

21.06.2017 copy of which order is appended as Annexure P/7 with the present petition. Keeping in view the report submitted by the committee, the Director State Transport, Haryana passed an order on 04.08.2017 (Annexure P/10) directing the General Manager, Haryana Roadways Panipat that keeping in view the findings recorded by the committee headed by the Chief Accountant Officer, an FIR be got registered against the petitioner.

6. Order dated 03.05.2017 suspending the petitioner as well as order dated 04.08.2017 directing the authorities to get an FIR registered against the petitioner are under challenge in the present petition.

7. It may be noticed that a Coordinate Bench of this Court while issuing notice of motion in the present petition directed that the petitioner should not be arrested in pursuance to the FIR registered against him till next date of hearing. The said interim order continues to operate even as of now.

8. After notice of motion, the respondents have filed reply wherein, they have mentioned that complaints were received raising certain allegations of embezzlement by the petitioner qua the amount taken in advance for the deposit of the same as toll tax, permit fee and the Director State Transport, Haryana, who was the competent authority constituted a committee to look into those allegations the said committee gave a report to the Director State Transport, Haryana and keeping in view the report given by the committee, competent authority of the department initially suspended the petitioner vide order dated 03.05.2017 and, thereafter, a direction was given for registration of an FIR against him, which FIR has been registered vide FIR No.1119 dated 25.10.2017 and the matter is already under investigation before the police authorities.

9. Prayer of the respondents is that as the FIR has already been registered against the petitioner, challenge of the petitioner to the order giving direction for registration of an FIR has rendered infructuous and the present petition may be disposed of as such.

10. Learned counsel for the petitioner argues that the present petition has not been rendered infructuous despite registration of an FIR for the reasons that keeping in view the averments made in the present petition, this Court is liable to go through as to whether direction given for registration of FIR is valid or not and in case the said direction is not given in proper manner, order dated 04.08.2017 may kindly be quashed and in case said order is quashed, the FIR registered against the petitioner on the basis of the said direction will automatically stands quashed.

11. I have heard learned counsel for the parties and have gone through the record with their able assistance.

12. First of all, it is not a disputed fact that the Director State Transport, Haryana being a competent authority is well within its jurisdiction to take appropriate action against the employee of the department of Transport including holding a disciplinary proceedings as well as for initiating criminal proceedings in case the said authority is of the view that there are certain allegations which have come on record qua embezzlement, which needs to be enquired into or police needs to be informed so as to investigate as to whether there is any violation of Indian Penal Code or any other law so as to initiate criminal proceedings.

13. That being so, jurisdiction of the Director State Transport, Haryana to direct the authorities to register an FIR so as to investigate the allegations qua embezzlement of certain amount, cannot be treated as

arbitrary and illegal.

14. The grievance, which has been raised by the petitioner in the present petition is that the direction given by the Director State Transport, Haryana for registration of an FIR against him is without any valid basis.

15. The said argument is to be tested on the basis of the record. It may be noticed that before giving direction for registration of an FIR vide order dated 04.08.2017, the Director State Transport, Haryana had constituted a committee of four members so as to examine the record and make recommendations with regard to the factual aspect as to whether allegations made against the officials that there was embezzlement of certain amount, are correct or not. The said committee which was constituted on 29.04.2017 was modified on 21.06.2017. It is a conceded position that there is a report which has been given by the said committee, copy of which has been appended as Annexure R-2 and on the basis of the said report, Director State Transport, Haryana has passed an impugned order dated 04.08.2017. Once, the competent authority after receiving the report from the committee constituted is of the view that allegations alleged are serious and also involve criminal angle has rightly directed that same be investigated by the police by registration of an FIR. Registration of an FIR does not mean that the person against whom the allegations are alleged is declared as guilty of the allegations mentioned in the FIR as the same will only be looked into by the police by investigating the allegations. Hence, the action taken by the Director State Transport, Haryana on the basis of the report submitted by the committee cannot be treated without jurisdiction so as to get an FIR registered against the petitioner.

petitioner that in the present case, only some of the members of the committee had given report hence, it cannot be treated as a conclusive report of the committee so as to give jurisdiction to the Director State Transport, Haryana to pass an order directing the authorities to register an FIR. It may be noticed that report Annexure R-2 is given by all the members of the Committee, who have signed the report as well. That being so, it cannot be said that the report has been given by only three members of the committee and not by all the committee members. Once, the report has been signed by all the members, same is to be treated as a report of the committee. Hence, the objection being raised by the petitioner cannot be accepted.

17. Even otherwise, once the Director, State Transport, Haryana being an administrative head of the transport department has jurisdiction to get an FIR registered, it cannot be said that the said jurisdiction will depend upon the report of the committee. Upon receiving a complaint even without the formation of the committee, the Director State Transport, Haryana had a power to take appropriate decision so as to conduct a disciplinary proceedings or send a report to the police to look into the allegations. Argument of the learned counsel for the petitioner that action taken by the Director State Transport, Haryana vide impugned order dated 04.08.2017 is without a valid report of the committee so as to challenge the jurisdiction of the Director, State Transport, Haryana to pass order dated 04.08.2017 to register an FIR, cannot be accepted.

18. Further argument of the learned counsel for the petitioner is that no FIR should have been registered on the basis of the direction given by the Director State Transport, Haryana vide order dated 04.08.2017 as the same cause prejudice to the petitioner.

19. It may be noticed that an FIR has already been registered. Once, an FIR has been registered the same can not be challenged on the ground that the jurisdiction to recommend the registration of an FIR was wrongly utilized. If the petitioner is aggrieved against the registration of an FIR either on merits or on jurisdiction, the same can only be challenged under Section 482 of the Cr.P.C. There is no challenge to the FIR in the present proceedings hence, once, it is a established fact that FIR has already been registered, which FIR is not challenged in the present proceedings, the same cannot be set aside indirectly by accepting the plea of the petitioner that once the order passed by the Director State Transport, Haryana dated 04.08.2017 giving direction to the General Manager, Haryana Roadway, Panipat to get an FIR registered is set aside, which will mean that FIR so registered will automatically stands quashed.

20. Keeping in view the fact that FIR has already been registered, the police is well within its jurisdiction to enquire into the said allegations in accordance with law. Further, in case the petitioner is aggrieved in any manner against the registration of an FIR on any ground, he will be free to avail an appropriate remedy.

21. Even otherwise, vide impugned order dated 04.08.2017 direction for registration of an FIR has been given which mean that a request has been made to the police authorities to look into the allegations and investigate. Hence, in the present case, once after appreciating the facts, the police has registered an FIR, the same gets color of criminal proceedings, which can only be challenged under Section 482 of the Cr.P.C and not under article 226 of the Constitution of India.

Learned counsel for the petitioner submits that before

registration of an FIR, a letter has been written by the General Manager. Haryana Roadways, Panipat dated 30.08.2017 wherein, he has mentioned that only a sum of Rs.45,249/- stand unadjusted and has not been taken into account by the Director State Transport, Haryana before passing the impugned order and as per the reply, the said letter of the General Manager is under consideration of the department.

23. The said letter will not give any jurisdiction to the petitioner to get the FIR quashed or the recommendations made by the Director State Transport, Haryana for registration of an FIR bad in any manner. The same is a factual aspect, benefit of which can be taken by the petitioner in any manner in case same is permissible before the police authorities during the investigation.

24. Keeping in view the facts and circumstances recorded hereinabove, no ground to allow the prayer as raised by the petitioner in the present petition is made out and the present petition is accordingly dismissed.

September 13, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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