

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

202

CWP-24504-2017 (O&M).
Date of Decision: 22.09.2023.

AMARPAL SINGH

.. Petitioner

Versus

THE STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Gautum Dutt, Advocate,
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab,
for respondent No. 1.

Mr. J.S. Gill, Advocate and
Mr. Kanwar Raj Singh, Advocate,
for respondent No. 2.

VINOD S. BHARDWAJ, J. (ORAL)

The prayer in the present writ petition is for seeking quashing of the order dated 12.10.2017 (Annexure P-7) passed by the Punjab State Commission for NRIs, Chandigarh, whereby a direction has been issued to the respondent Authorities to add the name of the petitioner as an accused in the pending FIR No.215 dated 31.08.2017 under Sections 406, 420 and 120-B of the Indian Penal Code, 1860, registered at Police Station Adampur, Jalandhar and thereafter to complete the investigation in an expeditious manner.

Reference is made to the following extract of the dated 12.10.2017 (Annexure P-7) passed by the Punjab State Commission for NRIs, Chandigarh:-

“Today, Sh. Balkar Singh SP (Investigation) Jalandhar (Rural), is present and has produced the record of the inquiry conducted by him. From the perusal of the record, it is clearly made out that Amarpal Singh had connived with the Satbir Singh, in the commission of offence as alleged. There is overwhelming evidence on the inquiry report itself to indicate that a sum of Rs. One crore and thirteen lakhs were received by Satbir Singh, from complainant through bank account and Satbir Singh, further transferred a sum of Rs. 45 Lakh of Sh. Amarpal Singh. Not only this, in the statement of Amarpal Singh, before the SP, (Investigation), he has admitted that he was in partnership with Satbir Singh, in the purchase of the land from Neelum Rani etc. However, in his conclusion SP, (Investigation), has concluded that no evidence is forthcoming to establish the involvement of Amarpal Singh, which is incorrect and against the evidence on record. It may further be noticed that in his complaint, complainant has also made allegations of conspiracy as well as commission of offence by Gurpreet Kaur W/o Amarpal Singh, and in the evidence of the complainant it has come that she has received an amount of Rs. 43 Lakh and Rs. 57 Lakh in cash. However, not even a word has been said in the inquiry against Gurpreet Kaur w/o Amarpal Singh, in fact no findings have been recorded against Gurpreet Kaur, whether she was involved in the commission of offence or not. Similarly no finding has been recorded against Kulwinder Singh, who received a huge amount from Amarpal Singh. The Inquiry officer has clearly overlooked the record of the inquiry, which was sufficient to establish the prima facie commission of offence against Amarpal Singh, his wife

Gurpreet Kaur, and one Kulwinder Singh Geeda, and record FIR against them.

In these circumstance the report of SP, so far as involvement of Amarpal Singh and his wife Gurpreet Kaur, and one Kulwinder Singh Geeda, is not accepted and is rejected.

At this stage Amritpal Singh, (complainant) has produced before the Commission an order dated 29.09.2017 passed by Gurnam Singh Dhillon, Additional Sessions Judge, Jalandhar in the bail application filed on behalf of the Satbir Singh in FIR No. 215 dated 31.08.2017, the relevant part of the order reads as under:-

"Before parting with this bail application, I consider it pertinent to bring on record that the Enquiry Officer has further muddled the water by his enquiry report. The enquiry report does not say even a word regarding the role of the nine persons, against whom specific allegation of fraud and cheating were levelled by the complainant. The Enquiry Officer instead chose to proceed against a person, against whom the complainant had not even uttered a word. The Enquiry Officer in his statement recorded in court, claimed that it is for the Investigating Officer to investigate the role of the other accused. It is pertinent to note that a big sum of Rs. One Crore 70 Lacs is involved in this case. The agreement to sell is dated 07.10.2011. Till the date of filing of application by the complainant before the Hon'ble NRI Commission on 17.03.2017, the time for filing suit for specific performance or for filling suit for recovery has already expired. The complainant who is an innocent NRI, has been running from pillar to post seeking justice. The accused party named by the complainant has been trying to

use its influence to evade criminal liability. The order dated 30.05.2017 passed by the Hon'ble Punjab State Commission for NRIs clearly reveals that the A.I.G. NRI, Amritsar, Sh. Dhuman Nimble (IPS) found the accused liable, but the accused using their political clout managed to get the enquiry transferred to the Director Bureau of Investigation, Punjab, Chandigarh, who marked the enquiry to Sh. Sushil Kumar, SP (Crime), who ordered the complaint to be filed. The report of the Enquiry Officer is also an apparent effort to hush up the matter and to shift the blame to Satbir Singh. It is pertinent to note that Non-Resident Punjabi Indians treat Punjab as their second home. In order to maintain their link with their motherland, they regularly visit and invest money in their state. Their investments bring valuable foreign exchange for the country. It would be sad if the criminal justice system is permitted to fall the faith reposed by the Non-Resident-Indians and looters and free booters are allowed to get away with their criminal acts. The Enquiry Officer has clearly led down the innocent NRI, who reposed faith in the system. The Enquiry Officer clearly was engaged in a White-wash of job. This kind of enquiry is not expected from an officer of his rank and experience. The Investigation Officer, who is ASI cannot be expected to override the enquiry report, which has been made by none less than the SP (Investigation) of the District. In these circumstances the SSP Jalandhar is directed to take personal charge of this case and to get the enquiry conducted by an IPS Officer, so that the complainant can get justice and the wrong doers, who has managed to go scot free till date, are hauled up and charged. The enquiry should be completed within a period of three months and action against all persons involved should be ensured, so

that the innocent NRIS do not loose faith in the criminal justice system of the State of Punjab. File be consigned."

In view of the aforesaid, a recommendation is made to register a cased of fraud and cheating against Satbir Singh, Amarpal Singh, Gurpreet Kaur, (wife of Amarpal Singh), one Kulwinder Singh Geeda and all other persons who are involved in this case, complete investigation and file a police report in the Court.

In view of the aforesaid, recommendation is made to add the names of other accused as noticed above in the FIR No. 215 dated 31.08.2017 and thereafter complete the investigation in expeditious manner preferably within two months and file police report in the court of competent jurisdiction."

(Emphasis supplied)

Learned counsel for the petitioner contends that as per the powers conferred upon the Punjab State Commission for Non-Residents Indians under The Punjab State Commission for Non-Resident Indians Act, 2011, no directions could have been issued by the NRIs Commission to steer the investigation and/or to treat any person as an accused/suspect and to file a final report against the persons. The said aspect is governed by the provisions of the Code of Criminal Procedure and the jurisdiction to conduct the investigation rests entirely to the discretion of the Investigating Officer. The Commission does not exercise powers of a Court and only a recommendatory body.

Learned counsel for the petitioner further contends that by issuing direction and making comment on the inquiry conducted by the

Superintendent of Police (Investigation) and also returning a positive finding rejecting the report submitted by the Superintendent of Police with a further direction that the petitioner along with his wife should be arrayed as accused in the said case and final report be filed against them, affirmative directions have been issued by the NRIs Commission which is contrary to the scope of powers conferred upon the Punjab State Commission for Non-Residents Indians.

Learned State counsel fairly submits that the operative part of the order even though used the expression 'recommendation', however, the same in essence is a direction to the investigating agency and therefore, she does not defend the above said order being beyond jurisdiction.

Learned counsel for respondent No.2, however, suggests that the above said recommendation may be treated as a report by the Punjab State Commission for Non-Residents Indians for scrutiny by the Investigating Agency instead of treating as a binding recommendation.

The said suggestion of the counsel for private respondent No.2 is fairly accepted by the learned counsel for the petitioner as well.

Accordingly, the present writ petition is disposed of, by observing that the recommendation/findings recorded in order dated 12.10.2017 be treated only as a report of the Punjab State Commission for Non-Residents Indians and the same would not be binding on the Investigating Agency, which shall be free to consider the said report along with the evidence so collected by the Inquiry Officer/Investigating Agency and to prepare a final report on the basis of its own investigation and satisfaction.

Pending misc. applications, if any, shall also stand disposed of accordingly.

September 22, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned

Whether reportable

: Yes/No

: Yes/No