

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

108+232

CRM-M-41325-2022

Date of decision: 13.02.2023

PAWAN KUMAR GARG

...Petitioner

VERSUS

U.T. CHANDIGARH AND OTHERS

...Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Divij Dutt, Advocate
for the petitioner.

Mr. Charanjit Singh Bakshi, Addl. PP UT Chandigarh
for respondents No.1 to 3.

Mr. Vishal Gupta, Advocate
for respondent No.4.

Mr. Karan Sachdeva, Advocate
for respondent No.5.

DEEPAK MANCHANDA, J.(ORAL)

CRM Nos.5964 & 6971 of 2023

For the reasons mentioned in the applications, the same are
allowed. Annexure R-5/1 and Annexures P-19 to P-22 are taken on record
subject to all just exceptions.

CRMs stand disposed of.

CRM-M-41325-2022

This petition has been filed under Section 482 Cr.P.C. for
issuance of directions for free and fair investigation of the case with the

further prayer for registration of FIR against respondent No.5 and the erring officials of respondent No. 4, who have played fraud and on the basis of forged documents obtained contract for running of a Solar Boat at Sukhna Lake, Sector 1, Chandigarh where even in spite of representations sent to respondent No.4 no action has been taken. Hence, the present petition has been filed.

Factual matrix of the present case emanated from the pleadings are that in the year 2018, the petitioner was allotted the contract for ferrying/running Solar Boat at Sukhna Lake vide contract dated 11.01.2018, where the petitioner was rendering his services to the tourists and respondent No. 4 after the investment of ₹ 30 Lacs. The contract agreement was for 03 years and same was extended till the finalisation of the new tender on existing terms and conditions contained in contract dated 11.01.2018. Thereafter, in the month of July, 2021, the respondent-department floated tender in various newspapers for various works including allotment of contract permission for the said project on revenue sharing basis but since number of bidders were less than 03, the respondent No. 2 again advertised notice inviting tender in the month of September 2021, October 2021 and November 2021 where even the petitioners also applied as per the 1st and 2nd advertisement but failed to participate in 3rd tender process due to some unavoidable circumstances. It is also mentioned that eligibility criteria was required to be fulfilled and on the basis of the same the bidders should have one year experience of ferrying any mechanical or solar boat having capacity of minimum 20 persons for getting the tender but respondent No.5 for getting the contract,

forged the experience certificate dated 12.03.2020 (Annexure P-10) granted by the Lucknow Development Authority, Lucknow.

Learned Senior counsel for the petitioner contends that after coming to know about the fraud played by the respondent No.5 on the basis of the information sought under RTI on 09.03.2022 and after getting the knowledge with regard to the same, the petitioner visited Lucknow and verified the true facts and realised that the respondent No.5 had committed fraud with the respondent-department. He further contends that when no action was taken on the complaints made by the petitioner through representation dated 21.03.2022 (Annexure P-1), petitioner preferred a Civil Writ Petition No. 7790 of 2022 which was disposed of vide order dated 19.04.2022 with the directions to decide the representation dated 21.03.2022 but same bore no fruits. Learned Senior counsel submits that the petitioner again approached the authorities at Lucknow and on enquiry it was found that the experience certificate dated 12.03.2020 issued to the respondent No.5 on the basis of which the respondent No.5 entered into a contract with respondent No.4 was cancelled by the authorities vide letter dated 10.05.2022 (Annexure P-15). He also submits that the petitioner again sent a complaint dated 06.06.2022 to respondent No.4 for taking appropriate action and cancellation of the contract but no action was taken in spite of several complaints and representations made to the authorities including respondents No.2 and 3 where even they failed to initiate an investigation. He argues that now petitioner has approached this Court on the ground that investigating agency is acting in collusion with the respondent No.4

and is deliberately desisting from taking appropriate steps and are bent upon to hushup the matter.

Learned counsel for the respondent-State while referring to the reply dated 28.09.2022 submits that as per settled law laid down by the Hon'ble Supreme Court, the relief cannot be granted by this Court in exercising jurisdiction under Section 482 Cr.P.C. as petitioner has not availed the remedy of filing complaint under Section 156(3) before the concerned Magistrate and has directly approached this Court. He further submits that during the course of enquiry, genuineness of the certificate in question was verified from the office of the Deputy Director, (Parks), Lucknow Development Authority, Gomti Nagar, Lucknow, UP and it was transpired that the said certificate is genuine whereas certificate which is stated by the complainant as genuine is a fake one. Hence, the allegations in the complaint filed by the petitioner were found to be false.

Learned counsel for respondent No.4 while referring to the investigation report dated 28.09.2022 of Incharge, P.P. Neelam, Sector 17, Chandigarh submits that the police authority after thoroughly investigating the matter has concluded that allegations levelled by the petitioner were not substantiated where no cognizable offence is made out as the petitioner did not participate for allotment of tender but, he was ferrying/running Solar Boats since long and his tender had already been expired. Moreover, just to keep away the other contenders, the petitioner procured the certificate in question from his own sources which was actually found to be fake and the certificate submitted by respondent No.5

with e-tender for allotment of tender from CITCO was found genuine and issued by the Lukhnow Development Authority, Lukhnow, U.P.

Heard learned counsel for the parties.

Vide order dated 09.09.2022, notice of motion was issued and respondents were directed to file written response. Short reply by way of affidavit dated 28.09.2022 of Gurmukh Singh, DSP, Central, Sector 17, Chandigarh was filed on behalf of respondents No.1 to 3, which is taken on record.

After going through the reply filed on behalf of respondents No.1 to 3, the report dated 28.09.2022 as well as submissions made by learned counsel for the parties and on the basis of material available on record, the allegations levelled by the petitioner were not only found to be false rather it was the petitioner, who procured the certificate which was found to be fake and petitioner filed the frivolous complaints as well as representations with the authorities just for his personal gain, where he even did not participate in the tender and his period of tender was also not alive but, just with the motive to keep away the other contenders from running business being his competitors the whole story was cooked up. Learned Senior counsel has raised the argument for fair investigation as well as the registration of an FIR whereas the police has already conducted the detailed investigation and in its report dated 28.09.2022 concluded that allegations levelled in the complaint could not be proved against the respondent No.5 and were found to be baseless, where no cognizable offence is made out, even thereafter, if petitioner is still aggrieved with the investigation conducted by the authorities he has

remedy to file complaint under Section 156 (3) Cr.P.C. and the petition of such nature is not maintainable directly before this Court.

Moreover, Section 482 Cr.P.C. cannot be invoked in all circumstances, which is not an alternative remedy to Section 156 (3) Cr.P.C. but a repository of inherent power. Further the normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C. If the petitioner has a grievance that the police station is not registering his FIR under Section 154 of Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering if no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the Magistrate concerned. If such an application under Section 156(3) Cr.P.C. is filed before the Magistrate, the Magistrate can direct for registration of FIR and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

Further the representation dated 21.03.2022 (Annexure P-1) which is annexed with the petition does not show that whether first condition of approaching the in-charge of the police station under Section 154 of Cr.P.C has been complied with as same is addressed to Managing Director, CITCO. Further the registration of an FIR involves only the

process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the Officer In-charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the Officer In-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that Police Officer could take further steps contemplated in Chapter XII of the Code only thereafter, and petitioner should have complied with the mandate of the section before filing the present petition.

In present case the petitioner has not exhausted the alternate remedies available to him under the law and has approached this Court directly invoking the jurisdiction under Section 482 Cr.P.C. In view of the same, the present petition can not be entertained and is hereby dismissed.

February 13, 2023
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(DEEPAK MANCHANDA)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No