

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**COCP-2587-2023 (O&M)
Date of decision: 24.08.2023**

Dinesh Beniwal

...Petitioner

Versus

Rajesh Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Yashdeep Nain, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

The petitioner is alleging violation of the order dated 01.10.2021, passed by this Court in CRM-M-41182-2021, which reads as under:

“The matter has been taken up through video conferencing.

Learned counsel for the petitioner submits that at this stage, he would be satisfied if directions are issued to respondent No.2 – Superintendent of Police, Fatehabad to consider and take a final decision on representation dated 08.02.2021 (Annexure P-5) made by the petitioner.

Learned State counsel, who appears on advance notice, has no objection if the above prayer is accepted.

After hearing learned counsel for the parties, the present petition is disposed of with a direction to respondent No.2 – Superintendent of Police, Fatehabad to forthwith consider the grievance(s) raised by the petitioner in the aforesaid representation made to him/her

and take action thereupon as he/she deems fit, in accordance with law.”

A perusal of the aforesaid order shows that neither the facts of the case were recorded nor any opinion was formed, while issuing directions to Superintendent of Police, Fatehabad that a cognizable offence is made out and only the only direction was to decide the representation.

In compliance thereof, the Superintendent of Police, Fatehabad, on 10.05.2023, has passed the following order:

“That order dated 01.10.2021 passed by the Hon'ble Punjab and Haryana High Court Chandigarh in CRM-M No. 41182 of 2021 titled "Dinesh Benival Vs State of Haryana & Others" was received in this office whereby the Hon'ble Punjab and Haryana High Court disposed of the aforesaid writ petition with the following directions:-

"...After hearing learned counsel for the parties, the present petition is disposed of with a direction to respondent No.2 - Superintendent of Police, Fatehabad to forthwith consider the grievance(s) raised by the petitioner in the aforesaid representation made to him/her and take action thereupon as he/she deems fit, in accordance with law..."

Whereas in compliance of the directions discussed above, the case file was perused. It was alleged that vide representation dated 08.02.2021 (Annexure P-5), the petitioner stated that a case bearing No. 50-7VCL titled "Gram Panchayat Dhahi Kalan Vs Rajbir etc." w/s 7 of Punjab Village Common Land Act, 1961, was pending before the Court of District Development & Panchayat Officer- cum A.C. First-Grade, Fatehabad. Vide Order dt. 08.01.2020, the above case was disposed off as dismissed in default and the file was consigned to record

room. After that the petitioner obtained certified copy of afore said order. Thereafter, Partap Singh, Vinod & Rakesh conspired with each other and on their instance DDPO, Assistant District Attorney and Reader to Court of DDPO-Cum-AC First Grade restored the aforesaid case by falsely indicating the presence of both parties and fixed the case for 03.02.2020. The representationist alleged that the case was restored in the absence of respondents. The representationist also said that the case was restored 20 days after the order dated 8.1.2020 and the entry regarding restoration of the case was made in the same order dated 08.01.2020 by tampering with the order.

In order to find out the truth, the then Superintendent of Police ordered DSP, Fatehabad (Traffic) to conduct an inquiry into the matter. Thereafter, DSP, Fatehabad (Traffic) submitted his report on 18.05.2021. The undersigned ordered DSP, Fatehabad to enquire into the matter again and he submitted his report on 03.05.2023.

I have gone through the record available on the case file as well-as enquiry report dated 18.05.2021 submitted by DSP, Traffic Fatehabad and enquiry report dated 03.05.2023 submitted by DSP Fatehabad. It has been found that a case bearing No. 50-7VCL Us 7 of VCL Act was filed by the Gram Panchayat, Dhahi Kalan, against Rajbir Singh (brother of representationist) and others. The said case was disposed off as dismissed in default by DDPO-cum-AC 1st Grade vide order dated 08.01.2020 and file was consigned to Record Room. After some days, it came to the notice of DDPO that the law officer representing the Gram Panchayat was present in the court on 08.01.2020. Then, he gave direction to his Reader Surjeet Singh to restore the case. Upon which,

Reader Surjeet Singh made an addendum in the aforesaid order dated 08.01.2020 to restore the case instead of passing a separate order and the case was fixed for 03.02.2020. The order now reads as "*ADA (P) is present on behalf of applicant and counsel for respondent also present. Now the case file fixed for 03.02.2020 after restoration.*" After hearing both the parties, DDPO-cum AC First grade decided the aforesaid case in favor of Gram Panchayat Dhabi Kalan on 14.01.2021(One year after restoring the case). The representationist moved an application before the then Superintendent of Police on 08.02.2021. Thereafter, representationist and others filed an appeal against the order dated 14.01.2021 before the Court of District Collector, Fatehabad. The same was dismissed by the Court of Collector, Fatehabad vide order dated 21.12.2022 by not giving any weight-age to the contentions/allegations made by the representationist in this regard. The land of Gram Panchayat, Dhabi Kalan was found to be in illegal possession of the representationist and his family members.

As per enquiry report dated 03.05.2023 submitted by DSP Fatehabad, no cognizable offence is made out in the present matter. The matter relates to Court proceedings. In these circumstances, no criminal action is made out in the present matter. Hence, the representation is hereby disposed off accordingly."

Learned counsel for the petitioner, when confronted with the aforesaid order, admits that an order has been passed by the Superintendent of Police, Fatehabad, however, he referred to a judgment of Hon'ble Supreme Court dated 08.08.2023, passed in the Criminal Appeal arising out of SLP (Crl.) No. 5883 of 2020, wherein while relying upon ***Lalita Kumari vs. State of Uttar Pradesh & Ors. (2014) 2 SCC 1***, it is held that where a

cognizable offence is disclosed, the police official cannot avoid his duty of registering an FIR.

A perusal of the speaking order, passed by the Superintendent of Police, Fatehabad clearly shows that a preliminary enquiry was conducted by the then Superintendent of Police on 18.05.2021 and again, a fresh enquiry through DSP, Fatehabad was conducted on 03.05.2023, on the basis of which, the Superintendent of Police, Fatehabad has formed an opinion that no cognizable offence is made out in the present case.

The arguments raised by learned counsel for the petitioner that no enquiry was required is of no avail as it is the petitioner himself who got a direction from this Court to decide his representation and, therefore, the Superintendent of Police was bound to follow the direction.

In view of the above, no willful disobedience is made out.

Dismissed.

24.08.2023
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No