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

CWP-27750-2023

Date of Decision: December 21, 2023

Jaibir alias Jaivir

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Vikram Singh, Advocate
for the petitioner.

.....

RAJESH BHARDWAJ, J.(ORAL)

Petitioner has approached this Court praying for setting aside the order dated 29.11.2023, Annexure P-5, passed by respondent No.2 and order dated 24.08.2023, Annexure P-3, passed by respondent No.3 vide which the petitioner has been removed from the post of Sarpanch in a manner totally unknown to law.

Adumbrated facts of the case are that panchayat elections in the village Digh, Block Ballabgarh, District Faridabad, were held in the month of November 2022 in which the petitioner was elected as Sarpanch.

It has been submitted by learned counsel for the petitioner that petitioner was the elected Sarpanch of village Digh. After having been elected as Sarpanch, the petitioner was served with a show cause notice dated 09.02.2023 wherein it was alleged that he was involved in case under Sections 148, 149, 323, 326, 307, 506, 120-B IPC vide case No.SC/189-2021 in which charges had been framed under Section 307 IPC. He submits

therein that the above-said FIR had no concern with the petitioner and at the time of filing of his nomination, it was duly mentioned in the nomination form, which was duly scrutinized by the Returning Officer. He submits that FIR was registered malafidely on account of the party faction in the village. He submits that without considering the reply filed on 22.02.2023, learned Deputy Commissioner passed an ex parte order dated 24.08.2023 removing the petitioner from the post of Sarpanch. He submits that no opportunity of hearing was given to the petitioner and thus removal order dated 24.08.2023 is totally unsustainable in the eyes of law.

It is submitted that aggrieved by the same, the petitioner filed appeal before respondent No.2, i.e. Divisional Commissioner, Faridabad on 28.08.2023. He has submitted that the petitioner was removed from his post of Sarpanch without carrying out any regular inquiry. He has submitted that learned Commissioner miserably failed to appreciate the submissions made by counsel for the petitioner and thus dismissed the appeal by passing a non-speaking and cryptic order, dated 29.11.2023. He has submitted that as per law settled, mere registration of FIR does not constitute any ground for disqualification to continue as Sarpanch as per mandate of Section 51 of the Haryana Panchayati Raj Act (for short, 'the Act'). He has submitted that no findings have been given, as enumerated in Section 51 of the Act, that registration of the FIR is likely to prevent the petitioner from discharging his duties. He submits that petitioner duly disclosed the fact of registration of the FIR in his nomination papers and no objection, whatsoever, was raised at that time. It is submitted that the impugned orders were passed totally in violation of the principles of natural justice as no adequate opportunity of

hearing was provided to the petitioner. Thus, the impugned orders being devoid of any merit are unsustainable in the eyes of law and deserve to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that petitioner was elected as a Sarpanch of village Digh. After having been elected as Sarpanch, the petitioner was served with a show cause notice wherein it was mentioned that in a case, i.e. SC/189/2021 under Sections 148, 149, 323, 326, 307, 506 and 120-B IPC charge sheet had been filed. The petitioner submitted his reply on 22.02.2023 to the show cause notice wherein it was mentioned by him that he filed the application for alteration/amendment of charges. The reply filed was appreciated by the Deputy Commissioner and the petitioner was called for personal hearing on 28.04.2023, 05.05.2023, 25.05.2023, and 06.06.2023 but the petitioner remained absent on medical ground. Thereafter, he was given another opportunity of personal hearing on 08.06.2023 and again the petitioner remained absent. Thus, the petitioner was removed from his post being disqualified as per Section 175(aa) of the Act. The appeal filed by the petitioner was also found to be without any merit and thus, the same was dismissed by the Divisional Commissioner on 29.11.2023. For appreciation of the arguments raised by counsel for the petitioner, Section 175(1)(aa) of the Act needs to be appreciated and the same is as follows:

“175. Disqualification.- No person shall be a Sarpanch, or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who-

(a) (i) and (ii) XXX XXX XXX

(aa) has not been convicted, but charges have been framed in a criminal case for an offence, punishable with imprisonment for not less than ten years; or
(b) to (s) XXX XXX XXX”

The action against the petitioner was initiated on receiving the information regarding the charges framed in the FIR under Sections 148, 149, 323, 326, 307, 506 and 120-B IPC. A perusal of the same would show that framing of the charges against the petitioner in the said case makes the petitioner disqualified as per mandate of the Act. On perusal of the order dated 24.08.2023, the Court does not find any infirmity in the same and thus, the present petition is hereby dismissed being devoid of any merit.

December 21, 2023	(RAJESH BHARDWAJ)
meenuss	JUDGE
1. Whether speaking/reasoned ?	Yes/No
2. Whether reportable ?	Yes/No