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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

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CWP-4583-2021 (O&M).
Date of Decision: 25.11.2024.

RAMESH KUMAR

... Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

... Respondent(s)

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

Present: Mr. Ramesh Sindhar, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 09.04.2019 (Annexure P-1) passed by the Lokayukta, Haryana, whereby he accepted the inquiry report and did not find any reasons to differ with the said preliminary inquiry report submitted by the Registrar. A further prayer has been made by the petitioner for initiation of action against the officials who had conducted investigation in case bearing FIR No.295 dated 17.06.2014, under Sections 302 read with 120-B of the Indian Penal Code,

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1860 and under Section 25 of the Arms Act, 1959 registered at Police Station Kharkhoda.

2 Learned counsel appearing for the petitioner contends that Dharambir, Satbir and Ranbir sons of Hoshiar Singh; Ankit and Amit sons of Satbir; and Babli Devi wife of Satbir Singh, all residents of Village Sohti, entered into a criminal conspiracy on 26.06.2014 and in furtherance thereto committed the murder of Jatin Kumar son of Mukesh Kumar (nephew of the petitioner). A case bearing FIR No.295 dated 17.06.2014 was thereafter registered under Sections 302 and 120-B of the Indian Penal Code, 1860 and under Section 25 of the Arms Act, 1959 registered at Police Station Kharkhoda. It is contended that the then SHO, Police Station Kharkhoda, gave a clean chit to Babli Devi wife of Satbir and did not file any charge sheet against her even though a disclosure statement was made by said Babli Devi during investigation. It was submitted that the Inspector misused his official position by not conducting a fair investigation. It is further submitted that after filing of the chargesheet and framing of charges, all accused persons, other than Ankit, were acquitted by the trial Court due to the above improper investigation. Accordingly, a complaint was filed by the petitioner before the Lokayukta, Haryana for a proper inquiry in the matter and to do justice.

3 The said complaint, on receipt, was forwarded to the Director General of Police, Haryana, with a direction to enquire into the allegations mentioned therein and to submit a report within a period of 45 days.

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4 An inquiry report was thereafter submitted by the Deputy Inspector General-cum-Superintendent of Police, Sonipat vide letter dated 23.07.2018. The same was duly supplied to the petitioner, who also filed his objections dated 15.10.2018 before the Lokayukta, Haryana.

5 The Lokayukta, Haryana, thereafter, directed the Registrar to conduct the preliminary enquiry who undertook the same and submitted his report on 25.02.2019.

6 On consideration thereof, the Lokayukta, Haryana, passed an order on complaint No.61 of 2018 filed by the petitioner whereby it was recommended to the competent authority that the acquittal in criminal case be inquired into/investigated as per the judgment of the Apex Court and that if any public servant is found guilty, strict action be taken against him within a period of three months. But he also recorded as under:-

“Admittedly, the accused Ankit as well as complainants Mukesh Kumar & others have preferred appeals before the Hon'ble High Court against conviction and acquittal respectively, which are pending consideration in the Hon'ble Punjab & Haryana High Court. As the matter has already been decided by the competent court of law and also the appeal is pending before the Hon'ble High Court, therefore, I do not see any reason to differ with the preliminary enquiry report submitted by the learned Registrar, so as to proceed for further

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investigation into the matter and the complaint deserves to be filed.”

7 Aggrieved thereof, the present writ petition has been filed by the petitioner.

8 It is argued by the counsel for the petitioner that while disposing of the complaint, the Lokayukta, Haryana, specifically recorded that accused Ankit as well as complainants Mukesh Kumar and others have already preferred an appeal before the High Court against conviction and acquittal respectively which are pending consideration. Since the matter is pending consideration before the High Court, hence, he did not find any reasons to differ with the preliminary inquiry report submitted by the Registrar and to proceed with further investigation in the matter and directed the complaint to be filed. He, however, relies upon the judgment of the Hon'ble Supreme Court in the matter of **State of Gujarat Vs. Kishanbhai and others, reported as (2014) 5 SCC 108**, and contends that Hon'ble the Apex Court specifically observed in the aforesaid judgment that every State should put in place a procedural mechanism, which would ensure that the cause of justice is properly served and would simultaneously ensure a safeguard of interest of those who are innocent. The Hon'ble Supreme Court directed the Home Department of every State to examine all orders of acquittal and record reasons for the failure of each prosecution case. A standing Committee of senior officers of the police and prosecution Departments should be vested with the aforesaid responsibility and to

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analyze the mistakes committed during investigation and/or prosecution, or both and to incorporate the suggestions in the existing/subsequent training programmes for junior investigation/prosecution officials. He contends that as per the report as many as 07 persons had been joined during the course of investigation who are either non-existent or had claimed to have not joined the investigation, as per the statements got recorded by them. The DSP also joined as many as 09 persons in the investigation and that the said persons are either family members or near relatives of the accused persons in FIR No.295 supra. The Deputy Superintendent of Police has shown three persons to have joined in the investigation and their statements having been attested and that Anil son of Sube Singh son of Shiv Lal, resident of Village Sohti was a non-existent person, as per the certificate issued by the Sarpanch. He thus contends that the investigation itself was defective.

9 Counsel for the respondent-State, however, refers to the written statement of Udai Singh Meena, IPS, Superintendent of Police, Rohtak, wherein it has been averred that the investigation of the case was conducted in a transparent and impartial manner and that the trial Court convicted the person found guilty of commission of offence under Section 302 IPC and under Section 25 of the Arms Act and sentenced him to life imprisonment. The brother of the petitioner also preferred an appeal against acquittal of other accused before the High Court bearing Appeal No.CRA-AD-89-2017. It is also averred that as an appropriate remedy has already been availed against the judgment of acquittal, the present writ petition deserves to be dismissed. It is further averred in the said reply that after registration of the

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case, an investigation was conducted as per the statutory scheme and a chargesheet was presented against all the accused persons except Babli Devi who was placed in column No.2 of the chargesheet. One person was convicted by the Additional Sessions Judge, Sonipat while others were acquitted. It is further averred that the Director General of Police, directed the Additional Director General of Police, Rohtak Range, Rohtak, to address the grievance of the petitioner espoused in the present petition vide its letter dated 15.03.2021 in pursuance whereof, the Additional Director General of Police, Rohtak Range, Rohtak assigned the task to the Superintendent of Police, Rohtak to review the investigation independently in the said case FIR and to identify the extent of any lapse or lacunae in the investigation. Upon receiving the directions, the case records were summoned along with police file and case diaries and the other evidence collected i.e. the statements recorded. On a careful examination, it transpired that the six accused persons were nominated as suspects in commission of the offence. Ankit was the prime accused who had fired gun shots on the deceased while other co-accused namely Dharambir, Satbir and Ranbir sons of Hoshiar Singh and Amit son of Satbir were implicated as accused for having hatched a criminal conspiracy to murder Jatin Kumar. Investigation also revealed that all the aforesaid persons were tried by the Additional Sessions Judge, Sonipat. As many as 21 prosecution witnesses were examined. After trial, learned Additional Sessions Judge, Sonipat, convicted only one person and others were acquitted. The petitioner had also preferred a complaint against the Deputy Superintendent of Police,

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Kharkhoda and then Inspector, Police Station, Kharkhoda, to the Inspector General of Police, Rohtak Range, Rohtak, whereby the Superintendent of Police, Jhajjar was directed to independently review the investigation in case FIR No.295 and to submit his report. Accordingly, an exhaustive scrutiny of the file was also conducted by the Superintendent of Police, Jhajjar, who submitted his inquiry report dated 05.11.2016 not finding any questionable, disputable, suspicious or dubious conduct in the investigation of the FIR. The said report had also been appended with the present petition. It was also submitted that while endorsing the preliminary inquiry report of the then Registrar, the Lokayukta, Haryana observed as under:-

"However, the copy of judgment mark 'C' proves that all the accused including accused Dharambir and Ms. Babli faced trial in criminal case bearing FIR No. 295 dated 17.06.2014, under Sections 302 and 120-B of Indian Penal Code and 25/54/59 of Arms Act. After trial except accused Ankit all the accused were acquitted. The investigation conducted cannot be said to be faulty, as even Mr. Dharambir and Ms. Babli, were acquitted after trial. Prosecution witnesses during trial have failed to prove the conspiracy entered into between all the accused and since the fire injury was caused by Mr. Ankit accused, so, he has only been convicted. It is pertinent to mention here that if the complainant was not satisfied of the investigation he could move the application before the trial Court for further investigation under Section 173(8) Cr.P.C. or could move the application under Section 311 Cr. P.C. by producing the cogent evidence before the trial Court. Hence, no further inquiry or investigation is required by this Institution at this

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stage. It is pertinent to mention here that accused Ankit has preferred an appeal against his conviction before the Hon'ble High Court and even the complainant has preferred an appeal against the acquittal of the remaining accused before the Hon'ble High Court. Now, the matter is subjudice, hence, it would not be appropriate to further investigate or inquire into the matter as there is no material on the record to reach at the conclusion that the respondents acted dishonestly or did not conduct the investigation properly, therefore, the complaint deserves to be filed."

14. That a careful perusal of the entire records shows that accused Ankit has preferred an appeal against the conviction in this case FIR No. 295, dated 27.06.2014, in this Hon'ble High Court as CRA-D-222-DB-2017, which is pending adjudication before this Hon'ble High Court, and fixed for 13.01.2022. A copy of the latest order is hereby annexed as Annexure R-1.

15. That, it is significant at this stage to highlight that, the brother of the petitioner, has also preferred a petition, as Appeal against Acquittals before this Hon'ble High Court, as CRA-AD-89-2017, which is now tagged with the appeal of the convict-Ankit in CRA-D-222-DB-2017. (A copy of the latest order in CRA-AD-89-2017, is hereby annexed as Annexure R-2)."

10 It was further contended that the Additional Sessions Judge, Sonipat did not record any adverse comment against the Investigating Agency or that the investigation was not conducted in a proper manner.

11 No replication controverting the specific averments contained in the written statement was filed by the petitioner.

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12 Having heard the learned counsel for the respective parties and going through the documents appended along with the present petition, I am of the opinion that insofar as the grievance of the petitioner against the final outcome of the investigation conducted by the investigating officer is concerned, an appeal has already been preferred before this Court. However, so far as the ratio of the judgment in the matter of *State of Gujarat Vs. Kishanbhai and others (supra)* is concerned, the said ratio is only an advisory to the State Governments to carry out training programmes for the investigating officers or the prosecutors into factors to be taken into consideration while conducting/completing any investigation or prosecution from a case study/analysis. The mandate was that the judgment of acquittal in any criminal case ought to be reviewed for future guidance of the investigating officers. The same is not in the nature of prescribing penalty for failure in proving the case unless a lapse is noticed. Further, it is neither the case of the petitioner nor any evidence has been led that investigation was not conducted in a fair manner on account of any illegal or material gains or by abuse of an authority to cause wrongful loss to the petitioner or to confer any undue advantage in favour of accused persons. An acquittal of a person after trial cannot be presumed as a tainted investigation having been misconducted for wrongful reasons. The domain of an inquiry by the Lokayukta is to allegations or complaint in relation to the abuse of authority or for carrying out the same for corrupt motives. In the absence of any such allegations and evidence to establish the same, every failure of investigation to succeed in securing a conviction cannot be presumed as a lapse sufficient

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to mandate initiation or recommendation of criminal proceedings against the investigating officers. The petitioner having already taken recourse to an appropriate remedy against the order of acquittal and the matter being sub judice, thus does not require any further action. Moreover, so far as the issue of police not filing a charge sheet is concerned, it is evident from a perusal of the judgment passed by the Additional Sessions Judge, Sonipat that Babli Devi wife of Satbir was also tried for commission of the said offence and was eventually acquitted. A mere recording of disclosure, which is not supported by recovery of any incriminating evidence, is inconsequential. Further, so far as the aspect as regards the legality or validity of the judgment passed by the Additional Sessions Judge, Sonipat is concerned, the same is already sub judice before the High Court and it would not be appropriate for this Court to be commenting thereupon. The limited issue brought before this Court is as to whether the investigating officer or agency is liable to be recommended for prosecution on account of the lapses, I find that in the absence of fulfillment of the basic ingredients for initiation and recommendation of proceedings before the Lokayukta, such a direction cannot be issued solely on account of failure of investigation to bring home the guilt of some accused persons. Finding no illegality or perversity in the order passed by the Lokayukta, Haryana, the present writ petition is dismissed.

November 25, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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