

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

CRM-M-8908-2018
Reserved on: 18.01.2024
Pronounced on : 22.01.2024
2024: PHHC: 008126

JAGDISH RAI

. . . . PETITIONER

Vs.

STATE OF HARYANA

. . . . RESPONDENT

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Aditya Sanghi and Mr. Sumit Sharma, Advocates,
for the petitioner.

Mr. Sumit Jain, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 CrPC, petitioner prays for quashing of FIR No. 0186 dated 31.08.2016 registered under Sections 406 IPC at Police Station Badhra, District Bhiwani as well as final report u/s 173 CrPC and all subsequent proceedings arising therefrom. This is the second petition. Earlier petition CRM-M-39341-2017 is stated to have been dismissed as withdrawn.

2. FIR in question (Annexure P1) was lodged on the basis of a letter sent by Block Development and Panchayat Officer, Dadri, as per which complaint No.285 of 2014 was made by one Jagdish son of Jage Ram, against petitioner Jagdish son of Data Ram, Sarpanch Gram Panchayat Atela. After conducting necessary enquiry, recovery of ₹81,718/- was made out against the petitioner. Repeated letters were sent to the petitioner to deposit the amount, but he failed to do so and so, Deputy

Commissioner, Bhiwani vide his letter dated 18.8.2016 had directed to lodge criminal case against the petitioner. After necessary investigation, challan has already been submitted in the Court.

3. It is contended by the petitioner that he has been falsely involved. Complaint No.285 of 2014 was made by Jagdish s/o Jage Ram before Hon'ble Lokayukta, Haryana for messing up with grants in the various schemes run by the Government and also levelling several other false allegations. The complaint was forwarded to Deputy Commissioner, Bhiwani, who asked Block Development and Panchayat Officer, Dadri to make an inquiry.

3.1 Ld. Counsel for petitioner contends that petitioner was not provided any opportunity to put forth his side and the BDPO, Dadri made a report dated 06.11.2015 (Annexure P2), holding that an amount of ₹81,718/- was recoverable from the petitioner. Said report was submitted to Deputy Commissioner, Bhiwani, who forwarded the same to Lokayukta, Haryana. Petitioner was then pressurized to deposit the amount of ₹81,718/- without hearing him, despite detailed letters sent to Deputy Commissioner, Bhiwani. Petitioner deposited the amount under protest and then, it was ordered by the Lokayukta, Haryana that no further action was required.

3.2 Ld. Counsel contends further that despite the report of the Lokayukta, Haryana, (Annexure P6) in this regard, Deputy Commissioner, Bhiwani forwarded the letter to BDPO for taking action against the petitioner, which is illegal. No case under Section 406 IPC is made out against the petitioner, as most of the allegations as levelled in the complaint made by Jagdish s/o Jage Ram were found to be false. As per allegation

No.6, petitioner had granted certain benefits to Sapera Basti, illegally constructed on Khasra No.104 of the village, but it was found in the inquiry that all the work done by the petitioner was in the interest of people and not in his personal interest. Further allegations No.10, 11 & 12 of the complaint regarding messing up with the attendance of the daily-wage workers in the muster-roll of the construction work done in the village.

3.3 Ld. counsel contends further that as per the relevant Rules of MNREGA operational guidelines, attendance of daily workers is captured by Mate/Gram Rozgar Sahayak of the village appointed by the competent official of the Government and that Sarpanch is not the competent authority to prepare the muster-roll of daily-wage workers and that it is the village Secretary/supervisor officer, who signed the muster-roll.

3.4. Apart from above, ld. Counsel for the petitioner further submits that even if all the allegations are taken at its face value, no case under Section 406 is made out as there is no allegation of any entrustment to the petitioner at any point of time. Therefore, the FIR in question deserves to be quashed.

4. Opposing the petition, ld. State counsel submits that after making the inquiry, it was found that petitioner had embezzled government funds to the tune of ₹81,718/- and therefore, FIR was rightly lodged and that after conclusion of investigation challan has already been filed. Prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and have appraised the record.

6. Perusal of the FIR (Annexure P1) would reveal that only allegation therein is that as per enquiry, recovery of ₹81,718/- had been made out against Jagdish Rai, Ex-Sarpanch of village Atela Kalan, District Bhiwani i.e., the petitioner. It is not at all specified as to under what head or for what reason, this recovery has been made out.

7. Annexure P2 is a report dated 06.11.2015, which was submitted by SDO (Civil), Charkhi Dadri to Deputy Commissioner, Bhiwani, on the subject of complaint No.258 of 2014 filed by Jagdish son of Jage Ram, resident of village Atela Kalan, perusal of which would reveal that various allegations had been made by complainant, which were inquired into by SDO (Civil), Charkhi Dadri. Most of the allegations were held to be not proved. However, under allegation No.6, it was found that though petitioner had done work in Sapera Basti illegally populated on the shamlat land, but the said work was done in public interest and not in the personal interest, but still it was technically wrong. Allegations No.10, 11 and 12 pertain to irregularities in MNREGA, as some of the workers are shown to have worked for lesser days, but wages are shown to have been given to them for more days.

8. Neither the inquiry report nor the final report under Section 173 CrPC (Annexure P8) reveal that it was the part of the duty of the Sarpanch at the relevant time i.e. the petitioner, to pay the wages to the daily-wage workers under the MNREGA scheme. The representations made to the Deputy Commissioner by the petitioner have not at all been considered. It is mentioned in the final report under Section 173 CrPC (Annexure P8) itself that during the investigation itself, the amount of

₹81,718/- had been deposited by the petitioner in Government treasury officer and receipt in this regard has been taken. This amount was deposited under protest as per Annexure P4.

9. In view of the aforesaid facts and circumstances, continuation of the proceedings against the petitioner will result in the miscarriage of justice, as *prima facie* no case under Section 406 IPC is made out, in the absence of any allegation of specific entrustment; or that petitioner was responsible for marking the presence of daily wage workers. It will not be out of place to mention that even the Lokayukta, Haryana vide its order dated 15.12.2016 (Annexure P6) disposed of the matter after observing that recovery of ₹81,718/- had already been effected and so, no further action was called for.

10. Consequently, petition is allowed. FIR No. 0186 dated 31.08.2016 registered under Sections 406 IPC at Police Station Badhra, District Bhiwani as well as final report u/s 173 CrPC and all subsequent proceedings arising therefrom, are hereby quashed.

(DEEPAK GUPTA)
JUDGE

22.01.2024

Vivek

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	No