

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-39009-2024
Date of Decision: 13.08.2024

Babu Lal ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. H.P.S.Ghuman, Advocate
for the petitioner.

Mr. Vikrant Pamboo, Sr. D.A.G., Haryana (through V.C.).

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
316	01.07.2022	Model Town, Rewari, District Rewari	7 and 13 of the PC Act

Seeking quashing of above captioned FIR, the petitioner who has now retired from the service as Clerk, has come up before this Court under Section 528 BNSS.

2. I have heard counsel for the petitioner to access and analyze whether the case is worth issuing notice or not and have also gone through the petition and the annexed documents and its analysis would lead to the following outcome. Petitioner claims to have joined the department as a Chowkidar on 01.03.1992 and was promoted as a Clerk in 2011. Petitioner claims that the troubles for him started in 2013 when he applied for the post of Accounts Assistant through proper channel against vacancy in promotional quota. His application remained pending for six years with the Head Office without any action being taken on it and the reminders were also not responded to. Subsequently in 2019, three people posted as Clerks were promoted as Accounts Assistant and the petitioner was ignored despite being eligible. He represented to Chief Administrator, HUDA and also sent reminders but no action was taken. Petitioner’s claim is that the promotions were made by suppressing material facts and concealing eligibility regarding qualifications. In the petition, the petitioner has mentioned various details about injustice and also about the suspicious degree of one candidate and finally the petitioner also represented to the Chief Administrator for taking action against the concerned Superintendent for making selection list in contrary to merits and eligibility conditions. Even after that he continued to represent and even sent a legal notice but was not responded to. Fed up with the silence of the department, the petitioner finally represented to the Hon’ble Chief Minister of Haryana and apprised him about the illegalities

committed by officials of HUDA and exposing their conduct and to gag his mouth, respondent No.3 in connivance with respondent No.4 made a false and concocted complaint against him for accepting illegal gratification. Based on such complaint, respondent No.5 recommended a strict disciplinary action against the petitioner vide his report dated 12.11.2018 (Annexure P-18). However, after that on 26.09.2018, respondent No.4 wrote a letter vide Annexure P-19 to Chief Administrator, i.e., respondent No.3 that he is fully satisfied with the action taken by the Estate Officer, Rewari and now no complaint is pending. However, some officers of the HUDA wanted to teach petitioner a lesson and got a writ petition filed through Jainarayan Jakhar in this High Court which was registered as CWP-3881-2021 seeking action against the petitioner. Vide order dated 25.03.2021 passed in CWP-3881-2021 disposed of the writ petition on instructions from the counsel appearing for HUDA that matter is being enquired into by the Estate Officer, Haryana and a final decision shall be taken within four weeks. After that on 25.09.2021, Chief Administrator, HUDA placed the petitioner under suspension vide Annexure P-21. Petitioner's next grievance is that despite suspension the charge-sheet was not issued within 90 days in proviso to Rule 5 (1) of Haryana Civil Services (Punishment and Appeal) Rules, 2016 and despite that they did not revoke the suspension. Feeling aggrieved, the petitioner approached this Court, but the order was not complied with and then he had to file a Contempt Petition. Counsel for the petitioner submit that all this was demonstrative to show that how department was inimical towards the petitioner, which led to the registration of the FIR captioned above. At this stage, it would be appropriate to refer to report under Section 173 CrPC which has been annexed with the petition and reads as follows:-

"1. Sir, the brief facts of the FIR are that It was registered on the complaint of Jai Narayan Jakhar S/O Manphhol Singh Jakhar R/O H.No. 761, Sector 15A Hisar, the subject of which is, I declare that I, Jay narayan Jakhar, son of Shri Manphool Singh, am a permanent resident of house 761 Sector 15-A, Hisar and declare the following: 1. That my father Shri Manphool Singh is an Ex. Serviceman was from Sipahi Bank who had applied for a 350 square yard plot in HSPHUDA Sector 18 Defense Rewari in 2010 on the instructions of the Honorable High Court of Punjab and Haryana. CWP NO.2021 OF 2010 my father had paid 10 percent earnest money for a 350 yard plot by getting fiancé done as per rules at OBC Bank PLA Branch Hisar. Plot no 502 GP in Sector 18 defence was allotted Haryana Urban Development Authority returned the earnest money to my father as it did not see any issue the allotment of the plot nor 10% was returned Bank has presented the signed blank cheque attached with the application before the banker got it bounced in 2013 and filed complaint u/s 138 of NI Act, against me and my father in the court at Hisar. My father wrote letter dated 11.11.2012, 13.01.2013 and 20.12.2013 to Haryana Sehri Vikas Pradhikaran but no action was taken. Hence my father sought the action taken report in the above said

representation from the Estate officer HUDA Rewari under Right to information Act which has not been received till date. Chief Information Commission Haryana announced decision in appeal No. 4684 of 2014 in the following terms. The copy of the order is attached. (a) Shri Kailash Chander Superintendent was fined. (b) Disciplinary proceeding was ordered against Babu Lal clerk. 2. But no action has been taken against Babu Lal till date. In this context, you have also not taken any action on the letter serial no: EA62018/166289/30 dated 20.08.2018. of Chief Administrator Haryana Sehri Vikas Pradhikaran Panchkula. 3. Due to non receipt of the said information I along with my father visited the court as accused in the case many times. My Father never remained defaulter and due to the action of the bank he has to face humiliation and remained under trauma till his death. 4. That in the mean while your office has not taken any action on Chief Administrator Haryana Sehri Vikas Pradhikaran Memo no. DA/ADA/NS/2015-567 dated 18.02.2018 because of influence of Babu Lal clerk. It is pertinent to mention here that Babu Lal has not given above said letter to my father under Right to information Act and misplaced them. 5 That on 27.07.2017 the document in original in respect of plot no. 562 GP were deposited in your office. The photo copy of the same is attached. I want to mention here that I was called thrice in your office w.ef July 2017 to December 2017 and you met me only once. On rest of the occasions you have refused to meet me and told me to meet Bhagwan Singh and Babu Lal. Sh Bhagwan Singh took bribe of Rs 12000/- in the name of taking the documents, then only documents were deposited. Thereafter you have started the verification of double / multiple in reserve category on 13.09.2017 for plot no. 640,214,599GP,535,562GP,85. The verification report of all these plot came till 1st week of December 2017. For verification also employees of Haryana Sehri Vikas Pradhikaran took bribe, which was managed by Babu Lal. On his telling one Sonu in Gurugram was given bribe. The CD recording of bribe and copy of bank account where money was deposited is' attached. After verification of 6 plot you and Babu Lal have allotted only three plot, that also after taking bribe. I am handing over a CD of Babu Lal taking bribe. In addition to this there are other audio and video CD, which can be produced later. 6 That on 15.02.2018 I made enquiry in your office that why plot no. 562GP was not allotted to me. Than Sh Babu Lal and other employee Sh Bhagwan Singh told that file of plot no. 562 GP, 535 and 640 are missing and these files can not be traced till bribe of Rs 400000/- per plot is not paid. Due to this I made a complaint in your office and I mentioned the incident of that day. My complaint may be read as part of this statement. That I sought information under right to Information Act on 20.03.2018 regarding above said complaint. That you have not given information despite the fact that you were working as SPIO thereafter I filed appeal before 1st appellate authority but you have not provided information in violation of appeal and I had to file 2nd appeal vide which I was informed vide memo no. ARTI-2997 dated 16.08.2018 that my complaint is missing due to which no

action, was taken on this. Now complaint dated 15.02.2018 is traced and its noting is being prepared. That my complaint was misplaced in order to harass me intentionally to mislead me as part of conspiracy. The allotment of plot no. 562 GP, 535 and 640 are still pending without any reason, whereas verification of all the plots was done collectively. You have allotted only plot no. 85,214,519 after taking bribe, as can be seen in CD Babu Lal accepting bribe. This is not possible without your participation. 9. It is also relevant here that, after my complaint dated 15.02.2018 your staff has posted verification letter regarding will in respect of plot no. 562 GP on 21.02.2018. That memo no. 564 dated 20.02.2018 was received back in your office on 07.03.2018. You have sent the same memo no. 564, 824 dated 20.02.2018/15.03.2018 to Naib Tehsildar Hissar who has sent back the verification of the will on 16.03.2018 to you, which was received in your office on 20.03.2018. The postal receipt are attached. The plot has not been allotted till date. 10. That you have asked me to appear on 27.09.2018 and 08.10.2018 regarding the complaint however in both the letters you have not mentioned about the date of my complaint. I have also replied your both letters in this regard. This fact came to fore before State Information Commission at the time of hearing 2nd appeal that you have written two letters regarding my complaint dated 15.02.2018. The approval of which was implemented by Deputy Superintendent of Police, City Rewari,. During the investigation, messages were given to the group to get involved in the investigation and complainant and Statements were also recorded after investigation of complainant. During the investigation, when complainant presented the relevant documents, they were seized by the police and the attached documents were obtained from the Haryana Urban Development Authority office, Rewari. Efforts were made to include Babulal Clerk named in the case and Bhagwan Singh was investigated, on which Bhagwan Singh, DC Rate Employee, Urban Development Authority Office, Rewari, found that there was no description in the video and by the apart from statement dated 29.10.2018 of the complainant, there was no sufficient evidence to make allegations against Bhagwan Singh and no evidence was found against Bhagwan Singh on the investigation and the reason for arrest was not found. An investigation was conducted involving the estate officer posted at the time, Mr. Siddharth Singh, on which it was found that a complaint was lodged as per Complainant Diary No. 655 dated 21.02.2018. In which complainant had accused Babulal of demanding money. After presenting the complaint given by complainant before the Estate Officer, Haryana Urban Development Authority, Rewari on 17.03.2018, an investigation was called on 27.09.2018 and 08.10.2018 involving complainant and on 29.10.2018, Haryana Urban Development Authority Rewari was called for investigation. Complainant Jai Narayan Jakhar joined in and presented his written statement and along with it he presented a CD in which Babulal clerk or an employee of Gurugram office named Sunny is seen taking the money. For taking action against them, Shri Siddharth Singh Estate

Officer had written Letter number 4798 dated 12.11.2018 to take action against Babulal and Sunny by Administrator HSVP Gurugram,. In the CD presented by complainant in the prosecution, Babulal Clerk and another person are seen taking money. Accused Babulal Retired had filed anticipatory bail in the Honorable High Court of Punjab and Haryana and on obtaining bail on 10.10.2023 was arrested by involving in investigation and during confession, the name of the second person seen taking money in the video was given as Vikas Deputy Sunny Data Operator Administrative Office Gurugram, which is the accused. Babulal, who has been granted bail from the Honorable High Court on 20.10.2023 and accused Vikas alias Sunny Data The arrest of Sunny Data Operator Administrative Operator Gurugram is pending, which is pending and for taking the record and permanent address of Vikas alias Sunny correspondence has been made office of HSVP Gurugram but he could not be arrested due to his non- appearance on duty. In the case, the accused Vikas will be arrested after getting his complete address. The evidence against the accused Babulal, who has been arrested in the case, has already gone through a long journey. Against the accused Babulal son of Shri Harlal resident of village Kaluka police station and Tehsil Mundawar Alwar Khairthal Tijara Raj Hall. No. 78-A Bhajan Colony, Near SMD Circle District Alwar, Raj., Challan prepared against Section 173 CrPC him. At the time of evidence of the FIR, witnesses mentioned at Sr. No.13 be summoned through summons and remaining accused Vikas @ Sunny shall be arrested soon and amended challan shall be presented in the court. ”

3. Seeking quashing of this report and the FIR, the petitioner has come up before this Court. Perusal of the 173 CrPC report would reveal that there is a video recorded in a CD in which one employee of Gurugram Office, Sunny, is taking money, who was associated with Babu Ram, Clerk. Said Sunny was Data Operator and had connived with the petitioner. According to the investigation, the petitioner had allegedly taken money for helping in allotment of one plot. It is not a case where if all the contents of the 173 report and the evidence collected are accepted on the face of it would point towards no offence, however, it is a case where all these points can be taken by the petitioner at the time of framing of the charges which is the first stage to filter and screen the frivolous prosecutions.

4. As far as power of High Court under 528 of BNSS to disrupt criminal proceedings at the initial stage is concerned, can be exercised only in peculiar circumstances and one such circumstance which needs to be considered in the facts of the present case is that whether evidence collected so far even if accepted entirely on the face value would not make out any case or not. A prima facie assessment of the evidence collected so far, thus point out that there the Investigator was justifiable in launching the prosecution. It is not a case where all the evidence collected so far, including the video recording, is taken as gospel truth still no offence is made out, thus it is not a case where criminal proceedings

can be disrupted at the stage of filing of the challan more particularly when petitioner has a statutory remedy to raise all these points at the time of framing of charges.

5. Given above, it is not a case worth issuing notice, present petition is dismissed. Liberty reserved to file a discharge application and raise all these points at the time of framing of charges.

(ANOOP CHITKARA)
JUDGE

13.08.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: No.