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

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**CWP-27578-2019 (O&M).
Date of Decision: 08.08.2024.**

AAHRTI ASSOCIATION, NEW GRAIN MARKET, SAMANA

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Harkirat Singh Sandhu, Advocate,
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab,
for respondents No.1, 4 and 5.

Mr. P.I.P. Singh, Advocate,
for respondents No.2 and 3.

Mr. Shiv Kumar, Advocate,
(Through Video Conference)
for respondents No.6 and 7.

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**VINOD S. BHARDWAJ, J. (ORAL)**

The prayer made in the present writ petition was for directing the respondents No.1 to 5 to take action in accordance with law into the embezzlement of 'Bardana' committed by respondents No.6 and 7 at New Grain Market, Samana by getting an inquiry conducted.

2. Learned State counsel appearing for the respondents No.1, 4 and 5 refers to the averments as contained in the written statement filed on behalf of respondents No.4 and 5 which are extracted below:-

"2. That it is respectfully submitted that the brief facts of the present matter are that applications bearing no. 13748/C-3 dated 08.05.2019 and 13151/C dated 27.09.2018 were moved by Sh. Vishal Gupta, District Manager, Markfed Patiala against Sukhwinder Sharma, Regional Officer (P) (respondent no. 6) and Lalit Kumar, Regional Officer (J) (respondent no. 7) were received at the office of Senior Superintendent of Police, Patiala, wherein it was stated that Head Office, Markfed constituted a committee and conducted enquiry of the claim of the Aartia Association Samana (petitioner association) that respondent no.6 and 7 has misappropriated the 300 bales provided by Markfed for the commission agents, due to which, the commissions agents used their resources to buy the same. In the conclusion report, it was stated that if the commission agents had used the packaging material from their resources, then it was the violation of policy and it was also mentioned that in absence of records, employees cannot be held accused of 300 bales. Subsequently, Head Office Markfed vide U.O. No. 888 dated 07.02.2018 constituted another committee to enquire the case and in the conclusion report, Sukhwinder Sharma

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(respondent no.6) and Lalit Kumar (respondent no.7) were proved guilty of misappropriation of records. Thereafter, charge sheet against the above said persons was issued. Furthermore, a meeting was held on 15.09.2018 and it was attended by Sant Sharan Singh, Manager (Food Grain); Darshan Kumar Sharma, erstwhile District Manager; Vishal Gupta, present District Manager, Vinod Kumar, District Manager Bathinda; Sunil Neyyer, Commercial Manager Khanna Plant, Sukhwinder Sharma, Regional Officer (P) (respondent no. 6); Lalit Kumar, Regional Officer (J) (respondent no.7); Kashmir Singh, Regional Officer (J); and some representatives of Arhtia Association Samana (petitioner association). In the said meeting, the respondent no. 6 and 7 did not present the required records and the committee reached to the conclusion that due to the misappropriation of branch records Samana, the committee could not reach any conclusion. The conclusion report was further sent to Head Office, who vide letter dated 25.09.2018, approved the sanction to get the case enquired by department of police. Hence, it was requested by Vishal Gupta, District Manager Markfed Patiala to the Senior Superintendent of Police, Patiala to take action against respondent no.6 and 7 for misappropriation of Markfed office records.

3. That it is respectfully submitted that the aforesaid applications were forwarded to the then Deputy Superintendent of Police, Sub-Division Samana for enquiry and subsequently, the Deputy Superintendent of Police, Sub-Division Samana sent the same to SHO PS City Samana to enquire the above said application.

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4. That it is respectfully submitted that after conducting detailed and thorough enquiry, SHO PS City Samana submitted in his enquiry report that after the perusal of the report received from District Manager, Markfed Patiala, transaction of 300 Bales of packaging material could not be proved due to unavailability of records. Hence, department of Markfed do not consider it financial loss to the department nor there was any audit misappropriation of records. The department of Markfed considered Sukhwinder Sharma (respondent no.6) and Lalit Kumar (respondent no.7) as guilty of misappropriation of records and it was written to the police department to take necessary action against them regarding the misappropriation of records.

5. That it is respectfully submitted that the enquiry report was forwarded to Senior Superintendent of Police, Patiala, who further sent the same to District Attorney (Legal) for his opinion. Subsequently, District Attorney (Legal) after the perusal of the enquiry report and the relevant documents, gave his opinion that offence under section 409 of Indian Penal Code was made out against Sukhwinder Sharma (respondent no.6) and Lalit Kumar (respondent no.7). Hence, case/FIR No. 85 dated 23.05.2019 under Section 409 of Indian Penal Code, 1860 was registered at Police Station City Samana, District Patiala, against respondent no. 6 and 7.

6. That during the course of investigation, one letter no. 616/5A dated 26.02.2020 sent by respondent no. 6 and 7 was received at the Police Station and after the perusal of the same, it came to light that the Senior officials of the Markfed department got the enquiry of the case conducted from Sh. Tej Ram Bansal, Retd. Additional Session Judge, who stated in his

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conclusion report dated 12.04.2019 that "As per evidence of the defence witness the said record is lying in the branch office of Samana and original FDPR lies in the DM Office, Markfed Patiala. When the record of 2013-14 is lying with the Br Office of Samana than there is no question of misappropriation of the records by the COs. From the above discussion and evidence I am of the view that the above referred charge against both COs is not proved." The copy of the enquiry report dated 12.04.2019 is annexed herewith as Annexure R-1/T for the kind consideration of this Hon'ble Court.

7. That it is respectfully submitted that from the perusal of the aforesaid enquiry report dated 12.04.2019 conducted by Sh. Tej Ram Bansal, Retd. Additional Session Judge and from the course of investigation, nothing was proved against the respondent no. 6 and 7 regarding misappropriation of records. Hence, the enquiry report of the SHO PS City Samana was sent before the then Deputy Superintendent of Police, Sub-Division Samana as nothing against respondent no. 6 and 7 was proved and hence, the present case/FIR is to be cancelled.

8. That it is respectfully submitted that after the perusal of the enquiry report, the then Deputy Superintendent of Police, Sub-Division Samana forwarded his enquiry report no. 3649/DSP/S dated 02.06.2020 to the then Senior Superintendent of Police, Patiala that as nothing against respondent no. 6 and 7 was proved and hence, the present case/FIR is to be cancelled. Upon which, the then Senior Superintendent of Police, Patiala vide order no.18906/C-3 dated 09.06.2020 approved the action. Subsequently, cancellation report U/s 173 Cr.P.C. was prepared and presented before the Ld. Court of concerned jurisdiction."

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3. Having heard the learned counsel for the parties and having gone through the status report filed by the respondents No.4 and 5 on 19.07.2023 to which no replication has been filed even though a period of about one year has elapsed, it is evident that the initial allegations levelled by the petitioner against respondents No.6 and 7 were inquired into by the police and an enquiry was also got conducted by the respondent-Department through the Additional Sessions Judge (Retd.). An enquiry report dated 12.04.2019 was submitted as per which the allegations of misappropriation of funds could not be established. The said enquiry report by the Enquiry Officer in the rank of Additional Sessions Judge (Retd.) was forwarded to the police. The same was also examined by the Deputy Superintendent of Police, Sub Division, Samana and on consideration of the entire report along with evidence so collected, he forwarded his enquiry report No.3649/DSP/S dated 02.06.2020 to the Senior Superintendent of Police, Patiala, recommending cancellation. Vide order No.18906/C-3 dated 09.06.2020, the Senior Superintendent of Police, Patiala has already approved the cancellation report to be submitted before the concerned Illaqua Magistrate.

4. I have taken into consideration the fact that the prayer made before this Court was only for directing the respondents to conduct an investigation and that the investigation has already culminated in a final report recommending cancellation, I am of the opinion that the primary prayer made by the petitioner stands answered. In case the petitioner has

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any grievance against the final report filed by the State/Police, he has the remedy to file protest/objections to the said report and to pursue his case as per law.

5. The present writ petition is accordingly disposed of with liberty to the petitioner to take recourse to his alternative remedies in view of the subsequent developments.

August 08, 2024
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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