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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-52262-2019
Date of decision : 30.01.2024

Surinder Singh Petitioner

versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. D.S. Sobti, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Dinesh Kumar Prajapati, Advocate
for respondent No.3-complainant.

PANKAJ JAIN, J. (Oral)

1. Petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.8 dated 07.01.2019, registered for the offence punishable under Section 409 of IPC at Police Station Mahesh Nagar, Ambala and all proceedings subsequent thereto.

2. As per the contents of the FIR, it was alleged as under:-

“One complaint No.39 dated 02.01.2019, moved by Block Development and Panchayat Officer, Ambala-II was received in the police station through special messenger. The contents of the same are as follows: From: Block Development Panchayat Officer, Ambala-II, To, The SHO, Mahesh Nagar, Ambala Cantt. No.39 dated 02.01.2019. Subject: For taking legal action against Shri Surinder Singh, Ex. Sarpanch, Gram Panchayat, Sarsehari (now included within the

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realm of Municipal Corporation Ambala Cantt.) on account of embezzlement of panchayat funds amounting to Rs.2,50,81,146-50/-. CM window complaint No.CMOFF/N/2018/23579 dated 05.03.2018. In reference to letter No.8019 dated 17.09.2018 O/o Deputy Commissioner, Ambala, inquiry report No.211 dated 03.02.2017 by Sub Divisional Officer (C), Ambala and inquiry report dated 24.08.2018. On the subject cited above, it is submitted that in the year 2010, area of Gram Panchayat, Sarsehari was included within the realm of Municipal Corporation, Ambala. A complaint was moved against Shri Surinder Singh, Ex. Sarpanch, Gram Panchayat by Shri Jagtar Singh, VPO Sarsehari, Tehsil Ambala Cantt, District Ambala. As per inquiry conducted by SDO (C), Ambala, allegations leveled were found true. Thereafter, the Deputy Commissioner, vide letter No.8019, dated 17.09.2018, sent the report of SDO (C), Ambala Cantt, to the police station and a copy whereof was also uploaded on the CM portal on 24.08.2017, whereby action was recommended to be taken against Shri Surinder Singh, Ex. Sarpanch, Gram Panchayat, Sarsehari, under Section 53 of the Haryana Panchayati Raj Act, 1994. In compliance to the directions issued by the Deputy Commissioner, the BDPO office has issued first notice bearing No. 3350 dated 28.09.2018 U/s 53 of the Haryana Panchayati Raj Act, 1994, to Shri Surinder Singh, Ex. Sarpanch, Gram Panchayat, Sarsehari asking him to deposit Rs. 20,81,146-50/- (rupees twenty lakhs, eighty one thousand, one hundred forty six fifty paise) with the Municipal Corporation, Ambala, on account of financial loss caused to the

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Gram Panchayat. But the said amount was not deposited by him. Thereafter, second letter No.4504 dated 18.10.2018, was issued to him asking to deposit Rs.20,81,146-50/- (rupees twenty lakhs, eighty one thousand, one hundred forty six fifty paise) with Municipal Corporation, Ambala, within one week. However, he failed to deposit the said amount with the Nigan. In this regard, a reply dated 30.10.2018, was received in the O/o BDPO, however, the same was not found to be satisfactory. Thereupon, vide letter No.4873 dated 15.11.2018, last opportunity was afforded to him to deposit Rs. 20,81,146-50/- (rupees twenty lakhs, eighty one thousand, one hundred forty six fifty paise) with Municipal Corporation, Ambala within one week and to produce thereof in the O/o BDPO. However, he did not deposit Rs.20,81,146-50/- with Municipal Corporation, Ambala on account of financial loss caused by him to the Gram Panchayat. Ultimately, vide letter No.6194 dated 26.12.2018, Shri Surinder Singh, was asked to deposit Rs. 20,81,146-50/- (rupees twenty lakhs, eighty one thousand, one hundred forty six fifty paise) with Municipal Corporation, Ambala within three days and to produce the receipt thereof in the O/o BDPO, but he again failed to deposit the said with Municipal Corporation, Ambala. Since, Shri Surinder Singh, Ex. Sarpanch, Gram Panchayat, Sarsehari has failed to deposit Rs.20,81,146-50/- (rupees twenty lakhs, eighty one thousand, one hundred forty six fifty paise) with Municipal Corporation, Ambala on account of financial loss caused by him to the Gram Panchayat despite Issuance of several notices, therefore, appropriate legal action be taken against

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him and this office be also apprised about the proposed action to be taken in the matter, so that report may be sent to the O/o Deputy Commissioner, Ambala. xxxx”

3. The precise allegations against the petitioner have been unearthed in the police report which reads as under:-

“xx xx xx

The accused Surender Singh, former Sarpanch, Gram Panchayat Sarsehri, Police station Mahesh Nagar, District Ambala, while working as Sarpanch from the year 2005 to 2010, misused the post of Sarpanch and misappropriated 158 quintal 57 Kilo wheat received under S.G.R.Y. Government Rural Employment Scheme, a sum Rs.95,000/- received in cash from the Government for earthen the land near the school, Rs.18,98,100/- received from the Government as a grants. Sh.Surender Singh, former Sarpanch while working as Sarpanch has misappropriated a total sum of Rs.20,81,146-50 (Rupees twenty lacs eighty one thousand one hundred forty six and paise fifty only) and caused financial loss to the Panchayat. On 19.01.2019, the inquiry report has been received in the office of Block Development & Panchayat Officer, Ambala-II, Ambala City, which has been taken into police possession as an evidence. The Hon'ble Court had allowed the interim bail to the accused Surender Singh, former Sarpanch and on 25.01.2019, orders were passed to appear in the investigation of the case. As per the orders of the Hon'ble Court, he was arrested in the case. After hearing both the parties, the Hon'ble Court dismissed the bail petition on 11.02.2019 and as per the orders passed in CRM-M-7765/2019 by Hon'ble Punjab & Haryana High

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Court, Chandigarh, on 21.02.2019 the accused Surender Singh, former Sarpanch had filed the bail petition in the court of Sh.Ramendra Jain. Hon'ble Punjab & Haryana High Court, Chandigarh had ordered the accused Surender Singh that he had caused a financial loss to the Panchayat to the tune of Rs.20,81,146-50 (Rupees twenty lacs eighty one thousand one hundred forty six and paise fifty only) while working as such upto 23.04.2019 and ordered to deposit this amount. But Surender Singh, former Sarpanch did not deposit the amount. On 21.05.2019, the Hon'ble Court dismissed the bail application of the accused and then the accused Surender Singh former Sarpanch filed his bail application in the Court of Hon'ble Supreme Court of India. The Hon'ble Court refused to hear this case and ordered him to pursue his case in the lower court and on 28.05.2019, arrest warrants of the accused Surender Singh, former Sarpanch upto 21.09.2019 were got issued from the court of Ilqa Magistrate. During the investigation, on 14.06.2019 the accused Surender Singh, former Sarpanch son of Sh.Satpal Singh, caste Ramdasia Sikh, resident of Sarsehri, police station Mahesh Nagar, District Ambala was arrested in the case. After getting conducted the medical examination of the accused, he was sent to the police lock up. During the investigation, on 15.06.2019, the accused was taken out of the lock up and enquiry was conducted. During the enquiry, the accused admitted the offence. The accused was produced before the Hon'ble Court. The Hon'ble Court allowed the police remand of the accused for two days. The accused backed out from his earlier admission and

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again admitted. As per admission memo, currency notes of Rs.50,000/- were recovered from the accused and recovery memo of the currency notes was prepared. The map of the recovery of currency notes was prepared. After getting the accused medically examined, the accused was sent to the lock up. On 17.06.2019, the accused Surender Singh, former Sarpanch son of Sh.Satpal Singh, resident of village Sarsehri, police station Mahesh Nagar, District Ambala was produced before the Hon'ble Court. The accused is in judicial custody in Central Jail, Ambala City since 17.06.2019. Sufficient evidence is available against Surender Singh, former Sarpanch son of Sh.Satpal Singh, resident of village Sarsehri, police station Mahesh Nagar, District Ambala. The complete challan against the accused is being produced in the Hon'ble Court. Prosecution may be granted by issuing summons to the witnesses.”

4. Mr. Sobti has relied upon Section 53(5) as well as Section 204 of Haryana Panchayati Raj Act, 1994 to submit that there is a statutory bar against making any recovery from the present petitioner who served as Sarpanch and further as per Section 204 of the Act, no action civil or criminal can be initiated in respect of any act done in good faith under the Act. He submits that the allegations with respect to misappropriation of wheat and the grant which is alleged to have been received for filling the land near the school also stands belied in terms of the enquiry report dated 13.05.2016 conducted by SDO (Civil) which fully exculpates the present petitioner. He further submits that the allegations under Section 409 IPC are with respect to the petitioner

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having exercised his power as a public servant and in the absence of there being a previous sanction as contemplated under Section 197 of the Code, the petitioner cannot be prosecuted.

5. *Per contra*, State counsel as well as counsel for the complainant have submitted that there is a documentary evidence with respect to receipt of grant by the panchayat and so far as the entrustment of wheat is concerned that also stands proved. Reference has been made to R-3/2 i.e. information under RTI Act, 2005 which shows that grant of Rs.18,98,100/- has been received for construction of streets, nallis, phirni etc. of the village and further RTI information received i.e. R-3/3 to demonstrate that the soil has been put in the pond by the school only and the gram panchayat has not done any work in the village under MANREGA scheme.

6. Having heard counsel for the parties, without going into the merits of the case, this Court finds that the touchstone is the parameters as laid down by Supreme Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others reported as 1992 SCC (Cri) 426**, wherein Apex Court held as under:-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent

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abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently

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improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. Thus, this Court is required to see whether the complaint can be said to be bereft of basic allegations to constitute offence punishable under Section 409 IPC or not.

8. Keeping in view the allegations that have come in the police report, this Court does not find that the prosecution can be said to be bereft of allegations that would not constitute the offence punishable under Section 409 IPC. Thus, there is no reason to exercise jurisdiction under Section 482 Cr.P.C. So far the plea raised by counsel for the petitioner with respect to there being any statutory bar is concerned, Section 53(5) of the Act deals with recovery of the amount and not the criminal offence. Criminal procedure code is a code in itself and Sections 468 to 473 deal with the limitation. Likewise the plea with

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respect to the bar under Section 204 of the Act is more in form of defence that the petitioner will have an opportunity to plead and prove during course of trial to show that action on his part was in good faith and thus he is required to be protected under Section 204 of the Act. So far as the plea with respect to sanction is concerned, the allegations levelled are with respect to embezzlement, the same obviously does not fall within his duties as Sarpanch to embezzle the amount.

9. Resultantly, the present petition is dismissed.

(PANKAJ JAIN)
JUDGE

30.01.2024

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No