

(2015) 04 SHI CK 0060

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 11252 of 2011

Chaman Negi

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154, 173
Penal Code, 1860 (IPC) — Section 468, 471

Citation : (2015) 04 SHI CK 0060

Hon'ble Judges : Piar Singh Rana, J

Bench : Single Bench

Advocate : Sandeep Chauhan, for the Appellant; M.L. Chauhan, A.A.G, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Piar Singh Rana, J.—Present Writ Petition is filed under Article 226 of the Constitution of India. It is pleaded that petitioner filed a criminal complaint to the Director General of Police Vigilance Department Khalini Shimla against non-petitioner No. 5 Puran Lal ex up-pradhan Gram Panchayat Nishani Tehsil Nirmand District Kullu HP relating to misappropriation of public fund. It is further pleaded that thereafter petitioner filed complaint on dated 11.10.2010 regarding misappropriation of public fund in the gram panchayat Nishani Tehsil Nirmand District Kullu HP to the Hon Tale High Court of HP. It is further pleaded that non-petitioner No. 5 Puran Lal ex up-pradhan Gram Panchayat Nishani Tehsil Nirmand District Kullu HP had submitted two bills of Rs. 50,000/- (Fifty thousand) and Rs. 2,30,000/- (Two lac thirty thousand) respectively but in fact no work was done and false bills were prepared by non-petitioner No. 5 Puran Lal ex up-pradhan Gram Panchayat Nishani. It is further pleaded that Hon Tale High Court of HP vide letter No. HHC/PIL/F-1/11-2010 forwarded complaint of the petitioner to Deputy Commissioner Kullu HP for necessary action in accordance with law under intimation to the petitioner. It is further pleaded that non-petitioner No. 3 Deputy

Commissioner Kullu ordered Sub Divisional Magistrate Anni to conduct inquiry on the complaint of petitioner. It is further pleaded that thereafter learned Sub Divisional Magistrate conducted inquiry and submitted report that fraud entry was committed in the muster roll by non-petitioner No. 5 Puran Lal Ex. up-Pradhan Gram Panchyat Nishani Tehsil Nirmand District Kullu HP. It is further pleaded that non-petitioner No. 3 Deputy Commissioner Kullu directed non-petitioner No. 4 Block Development Officer Nirmand to register FIR against non-petitioner No. 5 Puran Lal ex up-pradhan of Gram Panchayat Nishani. It is further pleaded that despite direction of Deputy Commissioner Kullu till date no FIR registered against non-petitioner No. 5 Puran Lal, Prayer for acceptance of writ petition sought as mentioned in relief clause.

2. Per contra reply filed on behalf of respondents No. 1 and 2 pleaded therein that complaint dated 19.5.2010 filed by petitioner was received in SV&AC Bureau vide diary No. 6232 dated 21.5.2010 and after examination the same was referred to Director Panchayati Raj HP Shimla vide reference No. 11213 dated 10.6.2010. Prayer for dismissal of petition sought.

3. Per contra separate reply filed on behalf of respondents No. 3 and 4 pleaded therein that one complaint dated 11.10.2010 was received in the office of non-petitioner No. 3 Deputy Commissioner Kullu through Registrar General-cum-Principal Secretary to HCJ High Court of HP vide letter No. HHC/PIL/F-1/11-2010 dated 3.11.2010 against non-petitioner No. 5 Puran Lal ex up-Pradhan Gram Panchayat Nishani regarding misappropriation of sanctioned amount allotted for development works in Gram Panchayat Nishani Tehsil Nirmand District Kullu HP. It is further pleaded that thereafter the matter was entrusted to Sub Divisional Magistrate Anni vide letter dated 27.11.2010. It is further pleaded that after completion of inquiry it was prima facie found that non-petitioner No. 5 Puran Lal has forged muster roll and drawn money and misappropriated it. It is further pleaded that non-petitioner No. 5 Puran Lal had also admitted vide statement dated 16.10.2010 that fraud entries were recorded in the muster roll. It is also admitted that Rs. 50,000/- (Fifty thousand) and Rs. 2,30,000/- (Two lac thirty thousand) were released by non-petitioner No. 4 i.e. Block Development Officer to Government Primary School Nishani. It is further pleaded that Rs. 50,000/- (Fifty thousand) were issued for the repair of Government Primary School and Rs. 2,30,000/- (Two lac thirty thousand) were issued for the construction of breast wall Government Primary School Nishani. It is further pleaded that as per inquiry report submitted by Sub Divisional Magistrate Anni forged entries were recorded in the muster roll. It is further pleaded that non-petitioner No. 4 Block Development Officer had received direction from non-petitioner No. 3 Deputy Commissioner Kullu vide letter No. 1796 dated 13.10.2011 to register FIR on the basis of inquiry conducted by Sub Divisional Magistrate Anni. It is further pleaded that in compliance to the direction of Deputy Commissioner Kullu vide letter No. 2511 dated 24.10.2011 BDO requested the Station House Officer Police Station Nirmand to register FIR against non-petitioner No. 5 Puran Lal Ex. up-pradhan Gram Panchayat Nishani. It is further pleaded that thereafter Station House

Officer Police Station Nirmand vide letter No. 3624/5-A dated 5.11.2011 wrote a letter to non-petitioner No. 4 Block Development Officer that no case was made against non-petitioner No. 5 Puran Lal. It is further pleaded that recovery proceedings of Rs. 1930/- were initiated against non-petitioner No. 5 Puran Lal and non-petitioner No. 5 had deposited the amount with the Secretary Gram Panchayat Nishani on dated 5.1.2012. It is further pleaded that Sub Divisional Magistrate Anni had conducted fair and impartial inquiry. Prayer for dismissal of petition sought.

4. Per contra separate reply filed on behalf of respondents No. 5 and 6 pleaded therein that non-petitioner No. 5 Puran Lal was elected in Gram Panchayat Nishani. It is pleaded that there are many developmental schemes financed by different agencies which are executed by gram panchayat. It is further pleaded that schemes are executed as required under execution of the said work. It is further pleaded that non-petitioner No. 5 Puran Lal had sincerely executed the work assigned to him. It is further pleaded that there was discrepancy of Rs. 1930/- (One thousand thirty) and same amount was deposited by non-petitioner No. 5 Puran Lal, Prayer for dismissal of petition sought. Petitioner also filed rejoinder and re-asserted the allegation mentioned in the petition.

5. Court heard learned counsel appearing on behalf of the petitioner and learned counsel appearing on behalf of non-petitioners and also perused entire record carefully.

6. Following points arise for determination in the present writ petition:

(1) Whether registration of FIR in forgery cognizable criminal offences under Sections 468 and 471 IPC is mandatory?

(2) Final order.

Finding upon Point No. 1.

7. Submission of learned Advocate appearing on behalf of the petitioner that registration of FIR in cognizable criminal offences is mandatory is accepted for the reason hereinafter mentioned. It is proved on record that criminal complaint was filed against non-petitioner No. 5 Puran Lal and thereafter same was referred to District Magistrate Kullu for necessary action in accordance with law. It is proved on record that thereafter District Magistrate Kullu entrusted inquiry to Sub Divisional Magistrate Anni District Kullu HP. It is proved on record that thereafter Sub Divisional Officer (Civil) Anni District Kullu HP submitted inquiry report and held in the inquiry report that non-petitioner No. 5 Puran Lal Ex. up-Pradhan had committed fraud entries in the muster roll. It is well settled law that muster roll is a public document and muster roll is prepared by public servant while discharging public official duty. It is prima facie proved on record that non-petitioner No. 5 Puran Lal had committed fraud to the tune of Rs. 1930/- (One thousand nine hundred thirty) in the muster roll. It is proved on record that thereafter recovery of Rs. 1930/- (One thousand nine hundred thirty) was

deposited by non-petitioner No. 5 Puran Lal. It is prima facie proved that up-Pradhan had acted as a public servant and had recorded fraud entries in the muster roll as a public servant. In the present case matter of public exchequer is involved. It is well settled law that no public servant can be allowed to enter fraud entries in the muster roll relating to public exchequer. There is no evidence on record in order to prove that non-petitioner No. 5 Puran Lal had challenged inquiry report before any competent authority of law. There is no evidence on record in order to prove that inquiry conducted by Sub Divisional Officer (Civil) Anni was set aside by any competent authority of law. It is proved on record that thereafter Block Development Officer had submitted complaint to Station House Officer Police Station Nirmand. Unfortunately in the present case Station House Officer Police Station who is not party in the present writ petition did not register FIR against non-petitioner No. 5 Puran Lal relating to cognizable criminal offence punishable under Sections 468 and 471 IPC. It is well settled law that in cognizable criminal offence concerned Station House Officer was under legal obligation to register FIR in a cognizable case. In the present case Station House Officer did not record FIR in cognizable criminal offence and over ruled the inquiry report submitted by Sub Divisional Officer Anni. It is well settled law that Station House Officer is not legally competent to override inquiry report submitted by Sub Divisional Officer (Civil) Anni. It was held in case reported in Lalita Kumari Vs. Govt. of U.P. and Others, (2013) 12 AD 209 : AIR 2014 SC 187 : (2014) CriLJ 470 : (2013) 6 CTC 353 : (2014) 1 JCC 1 : (2013) 14 JT 399 : (2013) 4 RCR(Criminal) 979 : (2013) 13 SCALE 559 : (2014) 2 SCC 1 : (2014) 1 SCJ 68 that recording of FIR in cognizable criminal offence is mandatory.

8. Submission of learned Advocate appearing on behalf of non-petitioner No. 5 Puran Lal that since non-petitioner No. 5 Puran Lal had already deposited the amount to the tune of Rs. 1930/- (One thousand nine hundred thirty) and on this ground petition be dismissed is rejected being devoid of any force for the reason hereinafter mentioned. It is held that deposit of amount to the tune of Rs. 1930/- (One thousand nine hundred thirty) by non-petitioner No. 5 Puran Lal will not exonerate him from cognizable criminal offence which he had committed earlier. In view of above stated facts point No. 1 is answered in affirmative.

Point No. 2 (Final order)

9. In view of my findings upon point No. 1 petition filed by petitioner under section 226 of the Constitution of India is allowed and Station House Officer Nirmand is directed to register criminal FIR under Sections 154 of the Code of criminal Procedure 1973 qua cognizable offence punishable under Sections 468 and 471 IPC against non-petitioner No. 5 Puran Lal Ex. up-pradhan resident of village and Post office Nishani, Tehsil Nirmand District Kullu HP and thereafter file report under Section 173 of the Code of Criminal procedure 1973 before Court of competent jurisdiction. Certified copy of the inquiry report submitted by Sub Divisional Officer (Civil) Anni will be transmitted to Station House Officer along with certified copy of order dated 23.04.2015 forthwith for compliance.

Observation made hereinabove is strictly for the purpose of deciding the present petition and it shall not effect merits of the case in any manner and will be confined simply for the registration of criminal case in cognizable offence. Petition disposed of. Pending application(s) if any also disposed of.