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**(1984) 11 P&H CK 0044**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 1767 of 1978**

Chander Bhan

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 22-11-1984

**Acts Referred:**

**Citation :** (1985) ILR (P&H) 36 : (1985) PLJ 320 : (1985) RRR 547

**Hon'ble Judges :** S.S.Kang, J

**Advocate :** Mr. I.S. Balhara, Advocate., Advocates for appearing Parties

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## Judgement

S.S. Kang, J.

1. This writ petition by Chander Bhan is directed against the order dated 27th December, 1977 (Annexure P.2) of the Secretary to Government, Haryana, Development and Panchayat Department, allowing the appeal of Chattar Singh.

2. Facts giving rise to the filing of this writ petition may briefly be stated thus : Chattar Singh respondent No.4 was elected Sarpanch of the Gram Panchayat, Barwasni. Chander Bhan petitioner and other members of the Gram Sabha, Barwasni filed a complaint against Chattar Singh respondent that according to the audit report he had embezzled the panchayat funds. The Block Development and Panchayat Officer under the directions of the Deputy Commissioner, Sonapat, conducted the inquiry against Chattar Singh. Chattar Singh was chargesheeted vide order dated 8th October, 1973, and his explanation was called for. After receiving the explanation of Chattar Singh, Deputy Commissioner, Sonapat, appointed the Block Development and Panchayat Officer, Sonapat, to hold a regular inquiry and assess the loss caused by Chattar Singh. The Block Development and Panchayat Officer held a full dressed inquiry and gave full opportunity to the complainant and Chattar Singh respondent No. 4. After carefully analysing the evidence and facts brought to his notice he held that Chattar Singh respondent No. 4 was liable to pay a sum of Rs. 3010/ to the Gram Panchayat under section 105(2) of the Punjab Gram Panchayat Act, 1952 (for short, "the Act") as applicable to the State of Haryana. Chattar Singh

respondent No.4 went up in appeal before the Deputy Director, Panchayats, and the same was dismissed vide order dated 2nd August, 1977. While making a minor modification he held that Chattar Singh was liable to pay a sum of Rs. 3,000/ and not Rs. 3,010/ as held by the Block Development and Panchayat Officer. Dissatisfied, Chattar Singh filed a revision petition which was allowed by the Secretary to Government, Haryana, Development and Panchayat Department, on a wholly wrong interpretation of section 105(4) of the Act. Aggrieved, Chander Bhan has filed the present writ petition.

3. The writ petition has been resisted by Chattar Singh respondent No. 4 on various grounds, inter alia, contending that Chattar Singh remained Sarpanch from 1964 to 1971. Thereafter he was elected as a Panch and was working as such when the inquiry was held. He had not embezzled any money of the Gram Panchayat. No proceedings under section 105(1) of the Act could be taken against the petitioner after the expiry of six of the two years from the occurrence of the alleged loan or after the expiry of two years from his ceasing to be a member, whichever is earlier. Since the said respondent had ceased to be a Sarpanch in July 1971, he could not be called upon to make good the loss after July 1973. Admittedly in this case, the notice was given after that date, so the proceedings were barred by limitation and the revision petition had rightly been accepted.

4. In order to appreciate the rival contentions, it will be appropriate to read the provisions of section 105 of the Act, as in Haryana, at the threshold :

"105. Liability of Members. (1) Every member of Gram Panchayat shall be liable for the loss, waste or misapplication of any money or property belonging to that body if such loss, waste or misapplication is a consequence of his neglect or misconduct while a member : Provided that where such member happens to be the Chairman, ViceChairman or a member of the Panchayat Samiti, the proceedings, under this subsection shall be taken by the prescribed authority.

(2) The Block Development and Panchayat Officer concerned may on the application of a Gram Panchayat or otherwise and, after giving the member concerned an opportunity to explain, assess by order in writing the amount due from him on account of such loss, waste or misapplication.

(3) Any person aggrieved by an order made under subsection (2) of this section may, within one month, of the date of such order apply to the Deputy Director of Panchayats to have it set aside and the Deputy Director of Panchayats may suspend the execution of the order upon such terms as to costs, payment into Court or otherwise as he thinks fit; but subject to the result of such application, if any, the order shall be conclusive proof of the amount due.

(3A) Notwithstanding anything contained in subsection (3), the Government may, either on its own motion at any time, or on an application received in this behalf within a period of sixty days from the date of the order, call for the records of any proceedings in which the Deputy Director of Panchayats has passed an order

under subsection (3) for the purpose of satisfying itself as to the legality or propriety of such order and may pass such order in relation thereto as it may think fit:

Provided that the Government shall not pass an order under this subsection prejudicial to any person without giving him a reasonable opportunity of being heard.

(4) Notwithstanding anything contained in this section, no person shall be called upon to explain why he should not be required to make good any loss, after the expiry of six years from the occurrence of the loss, waste or misapplication, or after the expiry of two years from his ceasing to be a member, whichever is earlier."

From a perusal of the above provisions, it is manifest that a member of the Panchayat cannot be called upon to explain why he should not be required to make good any loss after the expiry of six years from the occurrence of the loss or after the expiry of two years from his ceasing to be a member, whichever is earlier. Section 3 (i) of the Act, as applicable to the State of Haryana, defines "Panch" to mean a member of the Gram Panchayat or an Adalati Panchayat elected or appointed under the Act and includes a Sarpanch. The term of office of Panches and Sarpanches is fixed by Section 9 of the Act. Sub section (2) of Section 9 of the Act reads as under :

"(2) The Sarpanch and Panches shall hold office for a period of five years:

Provided that an outgoing Sarpanch or Panch shall, unless the Government otherwise directs, continue to hold office, until his successor has taken oath; ... .. "

It is clear from the above that the expression "Sarpanch" is also included in the definition of term "Panch". Panch and Sarpanch both are members of a Panchayat. It is the admitted case of both the parties that respondent No. 4 continued to be a member of the Panchayat from 1964 to the time of the filing of the writ petition in 1978. He did not cease to be a Panch or member of the Panchayat when the proceedings were initiated against him in 1973. It is also admitted case of the parties that six years have not yet lapsed from the date when the embezzlement is alleged to have taken place. So the proceedings could be taken against respondent No. 4 because the same were taken within six years of the occurrence of the default and he had not ceased to be a member of the Panchayat when the impugned action was taken. He still continued to be so. The fact that previously he was a Sarpanch and at the material time was a Panch makes no difference. For the purposes of section 105 of the Act, a Sarpanch is also a Panch.

5. In this view of the matter, the order of the Secretary to Government, Haryana, Development and Panchayat Department, cannot be sustained. However, Shri Arun Walia, learned counsel for respondent No. 4 has contended that the

revisional authority had not decided the revision on merits. He had allowed it on technical grounds that the proceedings were initiated beyond limitation. The revision petition of respondent No. 4 has yet to be decided on merits. There is force in this contention.

6. In the result, I allow this writ petition, set aside the order dated 27th December, 1977, of the Secretary to Government, Haryana, Development and Panchayat Department, and remand the case to him for fresh decision on merits after giving the parties an opportunity of being heard. The parties through their learned counsel are directed to appear before the revisional authority on 11th December, 1984.