

(2003) 11 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 18350 of 2003

Jagdev Singh

APPELLANT

Vs

Financial Commissioner and Principal Secretary to
Government Haryana, Development and Panchayats
Department and Another

RESPONDENT

Date of Decision : 24-11-2003

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 51(3)
Penal Code, 1860 (IPC) — Section 148, 149, 323, 325, 452

Citation : (2004) 136 PLR 870 : (2004) 1 RCR(Civil) 351

Hon'ble Judges : S.S. Nijjar, J; S.S. Grewal, J

Bench : Division Bench

Advocate : R.S. Longia, for the Appellant;

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—We have heard the learned counsel for the petitioner at length and perused the paper-book.

2. The petitioner was convicted under Sections 323, 325, 506, 148 & 149 of the IPC. He has been sentenced to undergo two years RI for offences u/s 324/149 and to pay a fine of Rs. 100/-. In case of non-payment of fine, he will further undergo R.I. for one month. He has been sentenced to undergo R.I. for a period of two years and to pay a fine of Rs. 100/- for the offences u/s 452/149 of the 1PC, In case of non-payment of fine, he will further undergo RI for one month. He has been sentenced to undergo RI for a period of three months for the offences u/s 323/149 IPC. He has been sentenced to undergo RI for a period of six months for the offence under Sections 506/149 IPC. This sentence has been imposed on the petitioner on 29.4.2003. Against the aforesaid conviction and sentence, the petitioner has filed an appeal. The Appellate Court has suspended the sentence during the pendency of the appeal. On the same charges, the petitioner was ordered to be suspended from the Office of Sarpanch by the

Deputy Commissioner by order dated 12.5.2003 on the ground that since the criminal case is pending against the petitioner, it would not be in the public interest to permit him to continue in the Office of Sarpanch. Against the aforesaid order, the petitioner filed an appeal before the Financial Commissioner on the ground that the order has been passed by the Deputy Commissioner contrary to the provisions of Section 51(3) of the Haryana Panchayati Raj Act, 1994. The Financial Commissioner, after hearing the counsel for the parties, has come to the conclusion that the merits of the defence of the petitioner in the criminal case will have to be seen by the Criminal Court in appeal. It was also argued before the Financial Commissioner that the petitioner-Sarpanch had not been afforded an effective opportunity of hearing. After going through the record, the Financial Commissioner has come to the conclusion that the only material facts which are relevant in the facts and circumstances of the present case are that the petitioner has been convicted of having committed serious criminal offence. The Financial Commissioner also came to the conclusion that the petitioner was given due show-cause notice. The petitioner submitted a written reply on 13.5.2003 to the show-cause notice. The petitioner was even heard by the Deputy Commissioner before the order of suspension was passed. The Financial Commissioner has come to the conclusion that the petitioner has not come to Court with clean hands as inspite of having been served with the show-cause notice and having replied to the same in writing, it was sought to be projected that the petitioner has been condemned unheard. Thereafter by relying on a Full Bench decision of this Court reported as Chiranjilal v. Financial Commissioner, Haryana (1978) 80 P.L.R. 582 (F.B.), the Financial Commissioner has dismissed the appeal on the ground that the petitioner has not come to Court with clean hands.

3. Learned counsel for the petitioner has vehemently argued that the judgment passed by the Financial Commissioner is contrary to the law laid down by this Court in the case of Mange Ram, Sarpanch Gram Panchayat Vs. Financial Commissioner and Secretary to Government, Development and Panchayat Department, Haryana, Chandigarh and others, . In the aforesaid judgment, the criminal case had been registered against the Sarpanch. On the registration of the criminal case, the Sarpanch was suspended by the Deputy Commissioner. In those circumstances, it was observed by the Division Bench that it was necessary for the authorities to conduct a preliminary enquiry. In paragraph 11 of the aforesaid judgment, this Court observed as follows:-

"11. Apart from this, it is provided in the proviso to Section 51(1) of the Act that suspension period of Sarpanch, Up-Sarpanch or Panch shall not exceed six months from the date of issuance of suspension order except in criminal cases involving moral turpitude. There is no finding that criminal case pending against the petitioner involves moral turpitude. As the period of six months has already elapsed, petitioner is entitled to be reinstated as Sarpanch."

4. Clearly, the Division Bench held that there is no finding that criminal case

pending against the petitioner involves moral turpitude. That observation was made since the petitioner therein had not been convicted. In the present case, the Financial Commissioner has applied his mind to the facts and circumstances of the case. The Financial Commissioner has come to the conclusion that conviction of the petitioner would show that the misconduct of the petitioner involves moral turpitude. We find that the order passed by the Financial Commissioner is not contrary to the law laid down by this Court.

In view of the above, the writ petition is dismissed.

Sd/- S.S. Grewal, J.