

(2004) 09 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6757-M of 2003

Smt. Gayatri Jain, P.C.S.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 23A, 42, 45
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 —
Rule 16
Judges (Protection) Act, 1985 — Section 2, 3
Penal Code, 1860 (IPC) — Section 120B, 408, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(A)(D), 13(2)
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11

Citation : (2005) 140 PLR 225 : (2005) 2 RCR(Criminal) 535

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Ashok Singla, for the Appellant; Mansur Ali, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—Petitioner, who has retired as Additional Secretary to Government of Punjab on September 30, 2001, has filed this petition u/s 482 Cr.P.C. for quashing of F.I.R. No. 43 dated 30.5.2002 under Sections 408, 420, 487, 468, 471 and 120B I.P.C. and Sections 13(1)(A)(D), 13(2) of Prevention of Corruption Act, 1988, registered with Vigilance Bureau, Patiala.

2. In the year 1997, the petitioner was posted as Additional Director Consolidation, Punjab, empowered with powers of the State Government u/s 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the Consolidation Act). On 24.6.1977, when she was so posted, the proprietors of village Sekhon Majra filed a petition u/s 42 of the Consolidation Act against the Gram Panchayat for re-distribution of the

Bachat land. Their claim was that during the consolidation, the department of consolidation imposed pro rate cut on the proprietors under Rule 16(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949. After utilising part of the land for the common purpose, some land remained unutilised, which was not to be transferred and could not have been vested in the Gram Panchayat and the same was liable to be re-distributed among the proprietors. The said petition was allowed by the petitioner vide her quasi judicial order dated 24.6.1997 while holding that the aforesaid Bachat land does not vest in the Gram Panchayat and it has to be re-distributed among the proprietors according to their share. Feeling aggrieved against the aforesaid order, passed by the petitioner, Gram Panchayat, Village Sekhon Majra filed Civil Writ Petition No. 16039 of 1997, which was admitted by this Court and operation of the order dated 24.6.1997, passed by the petitioner was stayed. The said writ petition is still pending in this Court.

3. During the pendency of the aforesaid writ petition, Gram Panchayat, Village Sekhon Majra also filed one contempt petition against the petitioner and ten other persons, who were the proprietors. The allegation in the contempt petition was that the petitioner has passed the order dated 24.6.1997 in violation of the judgment of the Hon''ble Supreme Court in Gram Panchayat Nurpur v. State of Punjab and Ors. 1 (1997)116 P.L.R. 694 (S.C.), instructions of the Government, dated 9.4.1997, and the order dated 29.5:1997, passed by Collector, Ropar u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961. The said contempt petition was also admitted by this Court and ordered to be heard with the aforesaid writ petition. Thereafter, the petitioner retired on September 30, 2001 on attaining the age of superannuation. Subsequently, the impugned FIR has been registered against the petitioner on the basis of the report of Vigilance Bureau, Patiala.

4. In the F.I.R., it has been alleged that the Gram Panchayat, Village Sekhon Majra was the owner of the disputed land and the petitioner, while working as Additional Director Consolidation, Punjab, had passed the order dated 24.6.1997, grossly in violation of the judgment of the Hon''ble Apex Court in Gram Panchayat Nurpur's case (supra), according to which the Additional Director Consolidation has no authority to pass any order in pending cases u/s 42 of the Consolidation Act, regarding the Shamlat land, which was the ownership of Hasab Rasad Jar Khewat and of Magbooja Malkan. It has been further alleged that in this regard, the instructions were already issued by the Government vide letter dated 9.4.1997. Despite all this, the petitioner did not care about the order of the Hon''ble Supreme Court and the Government instructions and ordered for re-partition of the land. In this way, by passing the order going beyond her jurisdiction, the petitioner has committed an offence by keeping in view her personal benefit and tampering with the government record. On the basis of the order, passed by the petitioner, the revenue record was changed by the Patwari in favour of the proprietors, who subsequently sold part of the land to various persons, mentioned in the F.I.R.

5. The petitioner has filed this petition for quashing the aforesaid F.I.R. by alleging that it is nothing but a clear abuse of the process of law. Counsel for the petitioner submitted that the only allegation against the petitioner is that she, while posted as Additional Director Consolidation, Punjab, has passed the order dated. 24.6.1997 contrary to the law laid down by the Hon''ble Supreme Court in Gram Panchayat Nurpur's case (supra) as well as the instructions issued by the Govt. The said quasi judicial order, passed by the petitioner, is under challenge before this Court in Civil Writ Petition No. 16039 of 1997, filed by the Gram Panchayat, Village Sekhon Majra. Counsel for the petitioner submitted that the petitioner had passed the aforesaid quasi-judicial order in good faith and in discharge of her legal and official duties. Section 42 of the Consolidation Act empowered her to entertain a petition filed by the proprietors for re-distribution and for correction of mistake in the record of the consolidation. Counsel further submitted that an officer, who discharges the duties under the Consolidation Act, has been protected u/s 45 of the Act, which reads as under:-

"45. Public servants indemnified for acts done under this Act.- No suit or other legal proceedings shall be maintained in respect of the exercise of any power or discretion conferred by this Act, or against any public servant or person duly appointed or authorised under this Act; in respect of anything in good faith done or purporting to be done under the provisions thereof or the rules made thereunder."

6. In view of the aforesaid provision, counsel for the petitioner submitted that When the petitioner was discharging her quasi judicial function and passed the quasi judicial order, no legal action can be taken against her and the lodging of the instant F.I.R. against her is a clear abuse of the process of law.

7. He further submitted that Section 3 of the Judges (Protection) Act, 1985 also protects a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. Section 2 of this Act defines the word "Judge", which reads as under:-

"Judge" means not only every person who is officially designated as a Judge, but also every person.

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in Clause (a).

8. Counsel for the petitioner submitted that even the view taken by the petitioner has now been affirmed by a Division Bench of this Court in Gurjant Singh and Another Vs. Commissioner, Ferozepore Division and Another, wherein it has been held that the Bachat land i.e. unutilised land after utilising land earmarked for

common purposes under Consolidation Scheme vests with the proprietors and it does not vest with the Gram Panchayat. Even vesting of the control and management of the Gram Panchayat u/s 23A of the Consolidation Act cannot extend to the Bachat land. It was further held that the Bachat land has to be re-distributed amongst the proprietors according to their share, in which they had contributed the land belonging to them for common purposes. Any mutation entry in favour of the Gram Panchayat regarding such Bachat land has to be completely ignored. Thus, counsel for the petitioner contended that the petitioner has not passed any wrong order. He further submitted that even if the order passed by an authority is wrong, the same can be corrected in appeal. As such, it cannot be said that the petitioner has committed any offence.

9. On the other hand, counsel for the respondent-State submitted that at this stage, the F.I.R. cannot be quashed, when there are specific allegations against the petitioner for misuse of official power by her with malafide intention.

10. I have heard counsel for the parties and have gone through the contents of the F.I.R. as well as the petition.

11. In the F.I.R., there is no specific allegation of forging the record, as far as the petitioner is concerned. This allegation is against the other accused. The only allegation against the petitioner is that she has passed the order dated 24.6.1997 in violation of the judgment of the Hon"ble Supreme Court in Gram Panchayat Nurpur's case (supra) and instructions of the Government dated 9.4.1997. Undisputedly, when the aforesaid order was passed, the petitioner was empowered to discharge the duty and function of the Director Consolidation u/s 42 of the Consolidation Act.

12. The proprietors of the village, whose land was taken during the consolidation after imposing pro rata cut, had filed application for re-distribution of the Bachat land, which was not utilised for any common purpose of the village and was wrongly mutated in favour of the Gram Panchayat. The petitioner, by passing a detailed order after hearing the Gram Panchayat and the concerned parties, allowed that application. Against the said order, the Gram Panchayat has filed Civil Writ Petition No. 16039 of 1997, which is still pending in this Court. The petitioner has passed the said order, while discharging her quasi judicial function. Section 45 of the Consolidation Act specifically protects the public servants for discharging their function and for their action done under the Consolidation Act. No suit or other legal proceeding shall be maintained in respect of the exercise of any power or discretion conferred by this Act. Further, Section 3 of the Judges (Protection) Act, 1985 also gives protection to every person who is empowered by law to give in any legal proceeding a definitive judgment. This Act, also provides that no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function. The petitioner, while discharging her duty as Additional Director Consolidation, in my opinion, was

discharging the function as a Judge as defined u/s 2 of the Judges (Protection) Act, 1985. Therefore, lodging of F.I.R. against the petitioner is that she has passed the order dated 24.6.1997 contrary to the judgment of the Hon''ble Supreme Court in Gram Panchayat Nurpw''s case (supra), wherein it was held by the Hon''ble Apex Court that the Additional Director Consolidation has no authority to go into the question whether the land in dispute is Shamlat Deh or not. This question can only be decided by the Authorities under the provisions of Punjab Village Common Lands (Regulation) Act, 1961. From the facts, stated in the F.I.R., it appears that it was not the question before the petitioner for determination as to whether the land in question was Shamlat or not. The question before her was as to whether the Bachat land vests in the Gram Panchayat or it has to be re-distributed amongst the proprietors as per their share, if the same has not been utilised for any common purpose. In this regard, it has been held by a Division Bench of this Court in Gurjant Singh''s case (supra), the Bachat land has to be re-distributed amongst the proprietors and it never vests in the Gram Panchayat. Thus, in my opinion, from the bare reading of the F.I.R., it is prima facie clear that no offence has been committed by the petitioner and continuation of such FIR against her is an abuse of the process of law.

In view of the aforesaid, the instant petition is allowed and F.I.R. No. 43 dated 30.5.2002 under Sections 408, 420, 467, 468, 471 and 120B I.P.C. and Sections 13(1)(A)(D), 13(2) of Prevention of Corruption Act, 1988, registered with Vigilance Bureau, Patiala is quashed only qua the petitioner.