

2022 PLRonline 0496

Punjab and Haryana High Court

Before Vinod S. Bhardwaj, J.

ASLOOP KHAN v. STATE OF HARYANA AND ANOTHER

CRM-M No. 20991 of 2017

21.04.2022

Criminal Procedure Code, 1973, S. 482—Indian Penal Code, 1860, S. 420—Haryana Panchayati Raj Act, 2015 S. 175-U, 188 — Petition for quashing complaint under Section 420 IPC read with Section 175-U of 2015 Act and summoning order by Magistrate — Filed by Sarpanch Petitioner possessed two ration cards and did not disclose dues payable to Electricity Department which was a disqualification for a candidate — Summoning under Section 175-U of 2015 Act —Order is Revisable—Does not bar or prohibit jurisdiction of High Court under Section 482 when there is apparent illegality —Cognizance could not be taken except on complaint by an order or under Authority from State Election Commission Section 188 of 2015 Act— If the initial action is not in consonance with law, all subsequent & consequential proceedings would fall. *State of Punjab v. Davinder Pal Singh Bhullar*, (2011) 14 SCC 770, *relied*.

Further held, that it is evident from a bare perusal of the statutory provisions that cognizance of the offence could not be taken except on a complaint made by an order or under Authority from the State Election Commission. The aforesaid pre-requisite prescribed in law not being satisfied, the proceedings would be vitiated. Further held, that the defect in the proceedings is fundamental and is the foundation of the entire case. Even a defect would vitiate all subsequent proceedings. The legislative intent and mandate is defeated by not carrying out the proceedings in a manner and under the authority known to law. The prohibition imposed being absolute and incurable, continuation of the proceedings would be a waste of judicial time, apart from being an abuse of the process of law.

[Para 11, 12, 13]

Cr.P.C. Section 482 - Mere fact that the said order is also a revisable order would not impede or prohibit the High Court from taking cognizance of an apparent illegality in exercise of its jurisdiction under Section 482 Cr.P.C. - An existence of an efficacious and alternative remedy ipso-facto does not bar or prohibit the jurisdiction of the High Court under Section 482 Cr.P.C. - Once the illegality is apparent and is not disputed or denied, continuation of any such proceedings would amount to perversity and perpetuation of injustice and is impermissible.

[Para 10]

Rajesh Lamba, Advocate, for the petitioner. Ashish Yadav, Additional A.G. Haryana. Amit Jain, Advocate, for respondent No.2.

VINOD S. BHARDWAJ. J. (Oral) – The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C”) praying for quashing of complaint dated 23.11.2016 (Annexure P-1) filed under Section 420 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) read with Section 175-U of the Haryana Panchayati Raj Act, 2015 as well as the summoning order dated 26.04.2017 (Annexure P-2) passed by learned Judicial Magistrate, First Class, Ferozepur Jhirka, summoning the petitioner for offence under Section 175-U of the Haryana Panchayati Raj Act and all the consequential proceedings arising therefrom.

(2) Learned counsel appearing on behalf of the petitioner inter alia submits that the petitioner is a permanent resident of village Singalheri and was elected as the Sarpanch of the Gram Panchayat in the elections conducted by State of Haryana. The respondent No.2 filed a complaint dated 23.11.2016 against the petitioner on the ground that the petitioner was possessing two ration cards and was also not disclosing the balance of Rs.3049/- payable to the Electricity Department. It was thus alleged by the respondent No.2 that as per Section 175 of the Haryana Panchayati Raj Act, 2015 prescribing disqualification of a candidate, a person shall be disqualified to be elected as a Sarpanch or a Panch of Gram Panchayat under sub Section ‘U’ in case he fails to pay arrears of electricity bills. The relevant Section of the statutory provision is extracted as under:

“175-Disqualifications: No person shall be a Sarpanch, or a Panch of a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who-(u) fails to pay arrears of electricity bills.”

(3) Upon Consideration of the evidence led by the complainant and the submission made, the JMFC Ferozepur Jhirka found that offence under Section 420 IPC is not made out and noticed that the petitioner- accused had given a false affidavit when was in contravention of the provision of Section 175 of the Haryana Panchayat Raj Act, 2015 & would attract a disqualification. The petitioner was accordingly summoned for offence punishable under Section 175-U of the Haryana Panchayat Raj Act, 2015 vide order dated 26.04.2017. The said order of summoning was never challenged by the respondent-complainant in any proceedings. He was thus satisfied & content with the said order.

(4) It is alleged by the counsel for the petitioners that prior to the filing of the nomination on 24.12.2015, the petitioner had deposited a sum of Rs. 2845/- with the Haryana State Electricity Board vide receipt No. 85 of B No. 28430. The proceedings in question were initiated on the ground that there was yet another electricity meter bearing khata No.11-1227 of PDCO No. 80/44 dated 4/2002 and as per record of leisure, the electricity bill of Rs. 3049/- is pending. Thus, proceedings were further initiated under Section 420 IPC

read with Section 175-U of Haryana Panchayati Raj Act, 2015. Upon consideration of the complaint as well as preliminary evidence, the petitioner was summoned only to face prosecution for offence under Section 175-U of the Haryana Panchayati Raj Act vide order dated 26.04.2017 (Annexure P-2). The said order for summoning as well as complaint has been assailed by the petitioner by filing the instant petition.

(5) Learned counsel for the petitioner has vehemently argued that the said offences under Haryana Panchayati Raj Act, as contemplated under Section 175-U and applicable to the petitioner would be covered under Section 187 (1)(h) of the Haryana Panchayati Raj Act. The same is extracted herein after below:

“187. Other offence and penalties therefor:— (1) A person shall be guilty of an offence, if, at any election he-

Xx xx xx xx xxx xx

Xx xx x xx xx xx xx

(h) makes false declaration or submits false contents in the affidavit or conceals any information, as the case may be, at the time of filing nomination.

(6) He makes a further reference to the Section 187 (2) (b) as well as to the Section 188 of the Haryana Panchayati Raj Act. The same are extracted herein after below:

“Section 187 (2) (b):

Any person guilty of an offence under this Section shall-

(b) If he is any other person, on conviction be punished with imprisonment for a term which may extend to six months or with fine of [five thousand rupees] or with both.

Section 188. Prosecution of certain offences:-

No court shall take cognizance of an offence punishable under section 184 or under section 185 or under clause (b) of sub-section (2) of section 187 except on a complaint made by an order of, or under authority from the State Election Commission.

(7) It is argued that the offence of concealment of information being punishable under Section 187 (1)(h) would prescribe the sentence under Section 187 (2) (b). It is also argued that by virtue of Section 188 of the Haryana Panchayati Raj Act, cognizance of an offence under Section 187 (2) (b) cannot be taken except on a complaint made by an order of or under authority from the State Election Commission. It is the contention of the petitioner that the complaint in question has not been filed by State Election Commission and no order of the authority had been obtained by the respondent No.2 from the State Election Commission before the initiation of the complaint. It is thus contended that the Court below was prohibited from taking cognizance of the said complaint.

(8) Mr. Ashish Yadav, Additional A.G. Haryana as well as the counsel appearing on behalf of

respondent No.2 have urged that the order of summoning being a revisable order, it was incumbent upon the petitioner to prefer a revision against the same and that the instant revision petition under Section 482 Cr.P.C. is not maintainable. The learned counsel however could not controvert the fact as noticed above and that the authority or permission had not been obtained from the State Election Commission or to establish that cognizance of the complaint would be taken even without the authority or sanction of the State Election Commission.

(9) I have considered the arguments raised by the respective parties and have gone through the record with their able assistance.

(10) The arguments raised by the respondents are being noticed to be rejected. The issue being legal, the mere fact that the said order is also a revisable order would not impede or prohibit the High Court from taking cognizance of an apparent illegality in exercise of its jurisdiction under Section 482 Cr.P.C. An existence of an efficacious and alternative remedy ipso-facto does not bar or prohibit the jurisdiction of the High Court under Section 482 Cr.P.C. Once the illegality is apparent and is not disputed or denied, continuation of any such proceedings would amount to perversity and perpetuation of injustice and is impermissible.

(11) It is evident from a bare perusal of the statutory provisions that cognizance of the offence could not be taken except on a complaint made by an order or under Authority from the State Election Commission. The aforesaid pre-requisite prescribed in law not being satisfied, the proceedings would be vitiated.

(12) The Hon'ble Supreme Court has held in the matter of State of Punjab versus Davinder Pal Singh Bhullar , that if the initial action is not in consonance with law, all subsequent & consequential proceedings would fall. The relevant extract of the same is reproduced as under:

"107.. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact- situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

108. In Badrinath v. Govt. of T.N. and State of Kerala v. Puthenkavu N.S.S. Karayogam this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

109.. Similarly in Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors., (2005) 3 SCC 422, this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

110.. In C. Albert Morris v. K. Chandrasekaran & Ors., (2006) 1 SCC 228, this Court held that

a right in law exists only and only when it has a lawful origin. (See also: Upen Chandra Gogoi v. State of Assam, Satchidananda Misra v. State of Orissa, SBI v. Rakesh Kumar Tewari and Ritesh Tiwari v. State of U.P.)

(13) The defect in the proceedings is fundamental and is the foundation of the entire case. Even a defect would vitiate all subsequent proceedings. The legislative intent and mandate is defeated by not carrying out the proceedings in a manner and under the authority known to law. The prohibition imposed being absolute and incurable, continuation of the proceedings would be a waste of judicial time, apart from being an abuse of the process of law.

(14) Hence, the present petition is accordingly allowed and the complaint dated 23.11.2016 (Annexure P-1) filed under Section 420 IPC read with Section 175-U of the Haryana Panchayati Raj Act, 2015 as well as the summoning order under Section 175-U of the Haryana Panchayati Raj Act, 2015 dated 26.04.2017 (Annexure P-2) passed by learned Judicial Magistrate, First Class, Ferozepur Jhirka, are hereby quashed.

Petition is allowed.