

Shiv Kumar Chauhan

Versus State of Haryana&ors.

CORAM : Present :

HON'BLE MR. JUSTICE ARUN MONGA

Dr. Sushil Gautam, Advocate, for the petitioner.

Mr. Bhupender Singh, DAG Haryana. (Presence marked through video conference).

ARUN MONGA, J. (ORAL)

223

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10422 of 2020 (O&M) DATE OF DECISION : 03.11.2020

...Petitioner

...Respondents

1. Grievance of the petitioner herein, inter alia, is inaction of official respondent No.4/Superintendent of Police qua non registration of an FIR against private respondents No.7 to 12, despite a complaint made by the petitioner. Through instant proceedings, issuance of appropriate direction to the SP is sought with further prayer to direct the DC and SP of the district to initiate action for committing a fraud by private respondents. Prayer is also for a direction to dissolve an educational charitable trust, wherein some of the private respondents are trustees, and/or in the alternative induct/appoint the petitioner as secretary of the said trust.

2. Succinct factual narrative, as pleaded in the petition, is that on the alleged allurements of respondents No.7 to 10, petitioner formed an educational trust namely Swami Vivakananda Educational and Charitable Trust. The petitioner and respondents No.7 to 10 were all Trustees in the said trust. The petitioner is stated to have invested about Rs. 1.25 crores for construction of a building meant for the educational institute run by the trust. It is alleged that

respondents No.7 to 10 used petitioner's goodwill to create the trust. Later on, they fraudulently passed a resolution removing him from the post of Secretary of Trust. Respondent No.9 was instead made a new Secretary. In connivance with respondent No.3, the school run by trust was then sub-leased for wrongful monetary gains. Aggrieved, petitioner approached the area Station House Officer/respondent no.6 with a complaint dated 02.04.2016. No action was taken on his complaint. Petitioner then approached Superintendent of Police, Kaithal with a complaint on 15.04.2016 but to no avail.

3. Prior to approaching police officials, petitioner also filed complaints before Deputy Commissioner, Kaithal (respondent No.3) and Tehsildar-cum-Charity Commissioner/respondent No.5 on 27.02.2019. Basis thereof, DC ordered an enquiry to be conducted by the learned Sub Divisional Magistrate. Enquiry report of SDM dated 15.04.2019 (Annexure P-5), for the reasons stated therein, recommended that complaint of the petitioner be filed.

4. In the enquiry report it is, inter alia, observed that the entire matter is already sub-judice before Civil Court as the petitioner had already filed two civil suits against the respondents.

5. Petitioner has not challenged the aforesaid enquiry report before any judicial forum. Though it is pleaded that a representation dated 23.04.2019 objecting to the findings of the report is pending on the administrative side, before the Deputy Commissioner, Kaithal.

6. In the afore premise, petitioner is aggrieved that despite his disclosing cognizable offences in his complaint dated 02.04.2016 and subsequent complaints, no FIR has been registered by the police. Hence, the instant petition seeking appropriate direction to respondent No.4/the SP, commanding him to register a criminal case against respondents No.7 to 12.

Further direction has also been sought to dissolve the above mentioned trust or in the alternative, induct/appoint the petitioner as its Secretary again.

7. I have heard the rival contentions of both the learned counsel.

8. The learned counsel for the petitioner has argued on the lines of contents and grounds taken in the petition. Per contra, learned State counsel, at the outset, submits that petitioner has not approached this court with clean hands, is indulging in multiplicity of litigation and he, therefore, deserves no indulgence on that short ground alone. He further argues that instant petition is liable to be dismissed on the ground of

concealment as well. On the same cause of action, petitioner has already preferred two civil suits bearing Nos. 481 of 2016 and 194 of 2017, both titled as “Shiv Kumar Vs. Veer Karm Singh”, which are pending adjudication in the Civil Courts at Kaithal. He submits that only in the context of expressing dissatisfaction qua enquiry report, in the passing reference, there is a very oblique/unnoticeable mention of sub-judice civil dispute. No other specific details and/or recitals thereof have been given in the instant petition, as was/is required by the petitioner, so as to come clean and be fair to this court.

9. On a query of this Court qua pendency of two civil suits, learned counsel for the petitioner answers in the affirmative, stating that petitioner has indeed filed the same, as pointed out by learned counsel for state. As to why the same have not been properly disclosed in the present petition, no satisfactory response has come forth.

10. In fact, pendency/filing of the civil suits has also been noticed by the SDM in concluding part of his enquiry report dated 15.04.2019(Annexure P-5) in following terms :-

“Report of District Elementary Education Officer, Kaithal was examined and documents presented by complainant were also reviewed. Complainant is stating that his signatures are

conducted fraudulently by other party and cheating is conducted in documentation and therefore police proceedings can be got conducted for the fraud and cheating. Regarding the same matter civil suits bearing case number 481/ 2016 titled as ‘Shiv Kumar Versus Veer Karan Singh’ and Case No. 194/ 2017 titled as ‘Shiv Kumar Versus Veer Karn Singh’ are pending before Hon’ble Civil Court for which next dates of hearing are fixed as 30.04.2019 and 10.05.2019 respectively. Therefore, the matter is sub-judice before Civil Court. Hence, the matter is recommended to the consigned to office records due to being sub-judice.”

11. No doubt, merely because civil suits are pending would not mean that simultaneous criminal proceedings cannot be instituted on the same cause of action. Provided of course, any criminal case is made out. Prima facie, the lis herein seems to be of civil in nature and institution of the criminal proceedings is being sought for collateral pressure and for settling private scores/gains. Be that as it may, it is for the appropriate court to look into the same, in accordance with law.

12. In my opinion, the petitioner ought to have first approached the trial Court under Section 156 (3) Cr.P.C for redressal of his grievance, if any,

before directly approaching this Court. Section 156 (3)ibid empowers a Magistrate to ensure proper investigation. Ordinarily, in case of a grievance arising out of non registration of an FIR, first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or any other competent police officer per Section 36 Cr.P.C. However, even if thereafter, grievance is unmitigated, one can take judicial recourse by approaching a Magistrate under Section 156(3) Cr.P.C. Still, thereafter, an aggrieved party has a further remedy of filing a criminal complaint under Section 200

Cr.P.C. Reference may be had to Apex Court judgment in “Sakiri Vasu v. State of U.P and others”¹.

13. The other relief qua dissolution of trust and/or induct/appoint the petitioner as its Secretary sought herein being civil in nature, instant petition qua the same is an abuse of the court process. In any case, conduct of the petitioner for indulging in subtle concealment, as aforesaid, does not inspire any confidence so as to exercise any jurisdiction under Section 482 Cr.P.C. Petition is dismissed with a cost of Rs.50,000/- to be deposited in Covid-19 fund created by U.T. Administration, Chandigarh. Liberty is though granted to approach trial court, as already observed herein above.

14. At this stage, learned counsel for the petitioner very rowdily exuberates that paying costs is not an issue and he is even ready to pay Rs.1.00 lac towards the same. He also boisterously claims that he has been instrumental in making many a judges and how can his arguments/contentions, therefore, be rejected by this court to dismiss the instant petition. To say the least, the tone, tenor, manner and conduct of the learned counsel for petitioner leaves a lot to desire. Yet, taking a lenient view thereof, this court rather prefers a self-restraint from taking any further action. However, on the invitation of the learned counsel for the petitioner, the cost imposed is enhanced to Rs.1 lac.

15. Pending applications, if any, also stand disposed of.

November 03, 2020

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Whether speaking/reasoned : Whether reportable :

¹2008 (2) SCC 409

(ARUN MONGA) JUDGE

Yes/No Yes/No

5 of 5