

cannot take cognizance of the offence except on the complaint in writing of the Court where such offences were committed regarding giving of false evidence or forged documents etc.”

(15) Therefore, in view of this decision and also the decision of another Single Judge of this Court in *Sheela Devi's case* (supra), it is clear that this Court can quash the F.I.R. also as it would be futile and meaningless to allow the police to investigate the case, if no Court could take cognizance of these offences which fall within the ambit of Section 195 Cr.P.C.

(16) Therefore, though a Court can be said to take cognizance of the offence only when it applies its judicial mind to the offences stated in the complaint or police report, it is clear that the investigation again cannot be allowed to take the functions of the Court and has therefore to be barred from investigating into these offences. If that is so, there is no purpose in allowing the F.I.R. or the consequential proceedings to continue, if ultimately the Court cannot take cognizance of the offences. In these circumstances I am of the view that the accused or this Court need not wait till the Court concerned takes cognizance of the offences in question, but can quash the F.I.R. itself.

(17) Therefore, taking into consideration all these aspects, I am of the view that the F.I.R. in question and the consequential proceedings have to be quashed.

(18) Accordingly, this petition is allowed and the impugned F.I.R. and the consequential proceedings are quashed.

R.N.R.

Before Hon'ble Ashok Bhan & K. S. Kumaran, JJ.

MANGE RAM,—Petitioner.

versus

FINANCIAL COMMISSIONER & SECRETARY TO GOVERNMENT
AND OTHERS,—Respondents.

C.W.P. 14178 of 1996.

20th February, 1997.

Constitution of India, 1950—Arts. 226/227—*Haryana Panchayati Raj Act*, 1994—S. 51(1)(a)—*Suspension of Sarpanch*—Placed under

suspension because of registration of criminal case—No notice issued before suspension—Notice untenable—Opportunity required to be given before placing Sarpanch under suspension—Mere registration of criminal case not enough—Authority to satisfy himself that the charge levelled will embarrass the accused in the discharge of his duties—Authorities to apply conscious mind and form such opinion.

Held. that a reading of section 51(1) of the Act shows that before taking any action with regard to suspension of Sarpanch, Deputy Commissioner concerned is required to form his opinion that the charge made or proceeding taken against the Sarpanch is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character. In the order Annexure P4, no such opinion has been formed by the Deputy Commissioner and the order has been passed mechanically. No other reason except that a criminal case has been registered against the petitioner has been given for placing the petitioner under suspension. Petitioner has been placed under suspension because of the registration of a criminal case. As to what is the effect of the registration of the case in the discharge of his duties as Sarpanch has not been mentioned. Deputy Commissioner while exercising powers under Section 51(1) acts as a *quasi judicial* authority. Before passing any order he has to observe the principles of natural justice and provide adequate opportunity to explain to the concerned person. The concerned person if given an opportunity can satisfy the authority that the accusation of the criminal offence which is subject matter of enquiry or trial neither amounts to moral turpitude or defect of character nor is in any way likely to embarrass him in the discharge of his duties as Panch. It does not show any conscious application of mind regarding involving of moral turpitude or defect of character or embarrassment which may be caused in the discharge of function as Sarpanch. We respectfully follow the view taken by the Full Bench in *Kashmiri Lal v. The Deputy Commissioner, Sonapat and others*, AIR 1980 Punjab and Haryana 209 and hold that the impugned orders Annexure P-4 and P-6 have been passed without affording due opportunity to the petitioner of defending himself, in violation of principles of natural justice, they are ordered to be set aside.

(Para 11)

G. P. Singh, Advocate, for the petitioner.

Haripal Verma, DAG, Haryana, for the respondent-State.

JUDGMENT

Ashok Bhan, J.

(1) Petitioner who is sarpanch of Gram Panchayat Village Khapar block Uchana district Jind. has filed this petition for issuance

of a writ in the nature of Certiorari for quashing the impugned order Annexure P/4 dated 9th July, 1996 placing him under suspension and order dated 19th August, 1996 Annexure P/6 dismissing the appeal filed against the order Annexure P/4.

(2) Petitioner is a Harijan and was elected as Sarpanch of village Khapar as the seat of Sarpanch of this village was reserved for scheduled caste category in accordance with Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the Act). It is averred that elections of Haryana Vidhan Sabha took place on 27th April, 1996. Petitioner supported congress candidate whereas Giza Singh Ex. Sarpanch of the village supported Ch. Virender Singh who was later on elected as Member of the Legislative Assembly. On 29th April, 1996, F.I.R. No. 121 under Sections 323/325/148/149/506 of the Indian Penal Code was registered against the petitioner. Aggrieved against the action of the Police, petitioner approached Deputy Commissioner, Jind, on 3rd May, 1996 and demanded inquiry into the matter so that real culprit could be punished. Another application was addressed to Superintendent of Police, Jind.

(3) Deputy Commissioner, Jind, placed the petitioner under suspension by holding that it is not in public interest to let the petitioner continue as Sarpanch. Against the order of suspension, petitioner filed an appeal which was dismissed by the Financial Commissioner and Secretary to Government Development and Panchayat Department, Haryana on 19th August, 1996 (Annexure P6). Petitioner has challenged the impugned orders Annexures P4 and P6 on the ground :—

- (i) that the same have been passed at the instance of Ch. Virender Singh M.L.A. *mala fide* as petitioner had opposed Ch. Virender Singh in the assembly elections ; and
- (ii) that the impugned orders had been passed without issuing notice and affording an opportunity of hearing, in violation of the principles of natural justice.

(4) Written statement has been filed on behalf of respondents No. 1 and 2. Ch. Virender Singh respondent No. 3 has not been served and prayed that name of respondent No. 3 be struck off from the memo of parties. Respondent No. 3 is, therefore, ordered to be struck off from the memo of parties.

(5) Counsel for the petitioner argued that the impugned orders have been passed in violation of the principles of natural justice; without issuing notice and affording an opportunity of hearing. It was urged that the petitioner ought to have been given a show cause notice before passing the order of suspension under section 51(1)(a) of the Act and the impugned order of suspension having been passed without hearing the petitioner was void *ab initio*; and, therefore, liable to be revoked. In support of this contention, he drew our attention to a Full Bench of this Court in *Kashmiri Lal v. The Deputy Commissioner, Sonapat and others* (1).

(6) Counsel appearing for the respondents disputed the proposition put-forth by the counsel for the petitioner and argued that no notice was required to be given to the petitioner before placing him under suspension.

(7) In *Kashmiri Lal's* case (*supra*) their Lordships of the Full Bench while considering section 102(1) (new) of the Punjab Gram Panchayat Act, 1952 (Act 4 of 1953) as applicable to the State of Haryana which is *para materia* with section 51(1)(a) of the Act, held as under :—

“We, therefore, approve the view taken by the Division Bench in Suresh Chand's case (*supra*) and hold that before an order of suspension can be passed against Panch or Sarpanch under the amended Section 102(1) of the Act, an opportunity of hearing or notice has to be afforded to the said Panch or Sarpanch. We, therefore, allow these two Writ Petitions Nos. 94 and 422 of 1979.”

(8) For a comparative study, sections 51(1) and (2) of the Act and Section 102(1) (new) of the Punjab Gram Panchayat Act, 1952 (Act 4 of 1953) as applicable to Haryana are reproduced below:—

“51. Suspension and removal of a Sarpanch, Up-Sarpanch or Panch.

(1) The Director or the Deputy Commissioner concerned may, suspend any Sarpanch, Up-Sarpanch or Panch as the case may be :—

(a) Where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if in

the opinion of the Director or Deputy Commissioners concerned the charge made or proceeding taken against him, is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character ;

- (b) during the course of an enquiry for any of the reasons for which he can be removed, after giving him adequate opportunity to explain.
- (2) Any Sarpanch, Up-Sarpanch or Panch, as the case may be, suspended under sub-section (1) shall not take part in any act or proceeding of the Gram Panchayat during the period of his suspension and shall hand over the records, money or any other property of the Gram Panchayat in his possession or under his control :—
- (i) if he is a Sarpanch to Up-Sarpanch ;
- (ii) if he is an Up-Sarpanch or Panch to Sarpanch ;
- (iii) in case both the Sarpanch and Up-Sarpanch are suspended to a Panch commanding majority in the Gram Panchayat :

Provided that the suspension period of a Panch, Up-Sarpanch or Sarpanch, as the case may be, shall not exceed six months from the date of issuance of suspension order except in criminal cases involving moral turpitude."

"102. *Suspension and removal of Panches.*—(1) The Director may suspend any Panch where a case against him in respect of any criminal offence is under investigation, enquiry or trial, if, in the opinion of the Director, the charge made or proceeding taken against him in the discharge of his duties or involves moral turpitude or defect of character.

(1-A) The Director or Deputy Commissioner may, during the course of an enquiry, suspend a Panch for any of the reasons for which he can be removed.

(1-B) A Panch suspended under this section shall not take part in any act or proceedings of the Panchayat during the period of suspension and shall hand over the records, money or any other property of the Panchayat in his possession or under his control to the person authorised by the Panch-commanding majority in the Panchayat.”

(9) In *Kashmiri Lal's case* (supra), their Lordships of the Full Bench approved the view taken in *Suresh Chand and others v. Director of Panchayats Haryana and others* (2), wherein it was held that order under section 102(1) (new) of the Punjab Gram Panchayat Act, 1952, would be a *quasi judicial* order and a show cause notice and an opportunity of hearing was required to be given before placing a Panch or Sarpanch under suspension, where a case against him in respect of any criminal investigation, enquiry or trial is pending, which was likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character. Merely on registration of a criminal case an order of suspension is not to be passed by the authority concerned automatically. The authority has to apply its mind to the nature of accusation and the charge and then satisfy himself whether it is of a type which can embarrass the person accused of that charge in the discharge of his functions as Panch/Sarpanch or involves turpitude or defect of character. It was observed that all the criminal offences under investigation, enquiry or trial may not embarrass a Panch in the discharge of his duties as the same may not involve moral turpitude or defect of character. It was illustrated by taking example that a charge under section 304-A, 323, 326 etc. of the Indian Penal Code may not involve any moral turpitude and they may not cause any embarrassment to any Panch in the discharge of his functions as such. It was held that Director has to apply his conscious mind to the nature of accusation and the charge and then satisfy himself whether it is of a type which can embarrass the person accused of that charge in the discharge of his functions as Panch or involves moral turpitude or defect of character. The concerned authority has to analyse the material placed before it critically and arrive at a conclusion that the pendency of the criminal case which involves moral turpitude or a defect of character is likely to embarrass the Panch or Sarpanch in the discharge of his duties. Such a sort of conclusions can be arrived at by the concerned authority only if it applies its conscious mind and

is satisfied objectively. If that be the position then notice and an opportunity of hearing was required to be given.

(10) The relevant portion of order Annexure P4 reads as under :—

“Shri Mange Ram, Sarpanch, Village Khapra, Block Uchana has been arrested on 29th April, 1996 in case No. 121 U/S 323/506/148/149, I.P.C. at P. S. Uchana. Hence, this Sarpanch is not in a position to discharge his duty. So, it is not in public interest his being on the post of Sarpanch.

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(11) Its perusal shows that petitioner has been suspended on the ground that he was arrested on 29th April, 1996 in a case under sections 323/325/148/149/506 of the Indian Penal Code, as such he is not in a position to discharge his duties and, therefore, it is not in public interest to permit him to continue on the post of Sarpanch. A reading of section 51(1) of the Act shows that before taking any action with regard to suspension of Sarpanch, Deputy Commissioner concerned is required to form his opinion that the charge made or proceeding taken against the Sarpanch is likely to embarrass him in the discharge of his duties or involves moral turpitude or defect of character. In the order Annexure P4, no such opinion has been formed by the Deputy Commissioner and the order has been passed mechanically. No other reason except that a criminal case has been registered against the petitioner has been given for placing the petitioner under suspension. Petitioner has been placed under suspension because of the registration of a criminal case. As to what is the effect of the registration of the case in the discharge of his duties as Sarpanch has not been mentioned. Deputy Commissioner while exercising powers under section 51(1) acts as a *quasi judicial* authority. Before passing any order he has to observe the principles of natural justice and provide adequate opportunity to explain to the concerned person. The concerned person if given an opportunity can satisfy the authority that the accusation of the criminal offence which is subject matter of enquiry or trial neither amounts to moral turpitude or defect of character nor is in any way likely to embarrass him in the discharge of his duties as Panch. It does not show any conscious application of mind regarding involving of moral

turpitude or defect of character or embarrassment which may be caused in the discharge of function as Sarpanch. We respectfully follow the view taken by the Full Bench in *Kashmiri Lal's* case (supra) and hold that the impugned orders Annexure P4 and P6 have been passed without affording due opportunity to the petitioner of defending himself, in violation of principles of natural justice, they are ordered to be set aside.

(12) 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 be exceeded 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.

(13) For the reasons stated above, this petition is allowed, the orders Annexures P-4 and P-6 are quashed. Respondent No. 2 is directed to reinstate the petitioner as Sarpanch of Gram Panchayat Khapar for the unexpired term. No costs.

J.S.T.

Before Jawahar Lal Gupta & T.H.B. Chalapathi, JJ.

M/S KUNDAN RICE AND GENERAL MILLS AND

ANOTHER,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS.—*Respondents.*

C.W.P. No. 12901 of 1996.

11th September, 1996.

Constitution of India, 1950—Art. 14 & 226—Recovery of Debts Due to Banks and Financial Institutions Act, 1993—Whether provisions of the Act are ultra vires and unconstitutional—Provisions of the Act are calculated to provide a speedier and simpler remedy for recovery of debts due to banks—Public interest is involved—Enactment aimed at avoiding dilatory procedure—Provisions not arbitrary—Classification well-founded.