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SARDAR MEENA

v.

THE STATE OF RAJASTHAN AND ORS.

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(Civil Appeal No. 1558/2022)

FEBRUARY 22, 2022

**[SANJAY KISHAN KAUL AND M. M SUNDRESH, JJ.]**

- C *Rajasthan Panchayati Raj Act, 1994 – s.38(1) – Removal and Suspension of a member of Panchayati Raj Institution – FIR was registered against the appellant-Sarpanch – Allegations that appellant along with others committed the offence of house trespass and even started indiscriminate firing that has resulted in the injuries on several parts of the body of the complainant – High Court granted bail to appellant – Preliminary enquiry initiated u/s.38(1) of the*
- D *Rajasthan Panchayati Raj Act read with r.22(2) of the Rajasthan Panchayati Raj Rules – Appellant suspended pending the enquiry – Held : The proceedings in the criminal case would not weigh at the stage in determining the conduct of the appellant – Suspension of the appellant cannot continue in ad infinitum manner when it has not to await any criminal proceedings – Necessity to bring an end to proceedings initiated u/s.38(1) of the Rajasthan Panchayati Raj Act, 1994 at the earliest – It will be for the respondent(s) to establish the charge against the appellant de hors the registration of the FIR on the principles of such proceedings and not on the principles of criminal proceedings of proof beyond reasonable*
- E *doubts – Rajasthan Panchayati Raj Rules – r.22(2).*

**Disposing of the appeal, the Court**

- G **HELD:1. The grant of bail is only as a result of investigations being complete and if one takes the bail order as a reason for no prima facie case, it would put the law on its head more. [Para 4][117-A-B]**

- H **2. The own stand of the respondent is that the action is based on the enquiry held by the concerned officer in pursuance to the FIR. The sequiter would be that the proceedings in the**

criminal case would not weigh at the stage in determining the conduct of the appellant but would be dependent on the material presented before the competent authority against the appellant. The suspension can also not continue in an *ad infinitum* manner, more so, when it has not to await any criminal proceedings. [Para 11][118-E-F]

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3. It is necessary to bring an end to the proceedings initiated under Section 38(1) of the Rajasthan Panchayati Raj Act, 1994 at the earliest and it is stated that the pleadings are complete. Thus, Respondent should conclude the proceedings on or before 30th April, 2022 and it will be the bounden duty of the appellant to cooperate with those proceedings so as not to delay the same. The suspension order would continue to be operational till 30th April, 2022 alone. It will be for the respondent(s) to establish the charge against the appellant de hors the registration of the FIR on the principles of such proceedings and not on the principles of criminal proceedings of proof beyond reasonable doubts [Paras 12 and 13][118-G-H; 119-A]

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*Ajit Singh & Anr. v. Financial Commissioner and Secretary to Government and Anr.*, (2009) 16 SCC 308  
– held inapplicable.

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#### Case Law Reference

(2009) 16 SCC 308

Para 9

held inapplicable

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1558 of 2022.

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From the Judgment and Order dated 13.09.2021 of the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Special Appeal (Writ) No.633 of 2021.

Shekhar Prit Jha, Sunil Kr. Jain, Advs. for the Appellant.

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Amitabh Kumar Chaubey, AAG, Ketan Paul, Adv. for the Respondents.

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- A      The Judgment of the Court was delivered by  
**SANJAY KISHAN KAUL, J.**
1. Leave granted.
2. An FIR was registered on 12.05.2021 by the complainant Ravi
- B      Kumar Meena against the appellant who is a Sarpanch of Gola ka Bas alleging that the said Sarpanch along with 8-10 other associates, with the intention of committing the offence of robbery, loot and murder came on a vehicle in the night armed with weapons. They committed offence of house trespass and with intention to cause fatal injury even started indiscriminate firing. This has allegedly caused injuries on several parts
- C      of the body of the complainant. On the registration of the FIR, the police started investigation and took the appellant into custody. The endeavour of the appellant to procure bail from the trial Court did not succeed but ultimately the High Court granted bail. The charge sheet is stated to have been filed post investigation and is awaiting the application of the
- D      mind by the trial Court concerned on whether there is sufficient material to frame charges.
3. The aforesaid proceedings resulted in the Development Officer, Panchayat Samiti, Rajgarh seeking information about the FIR and further materials. Successive reports were sent by the police. The Development Officer wrote a letter on 24.05.2021 to the Chief Executive Officer, District Parishad, Alwar intimating the latest factual scenario. He in turn shared the findings of his enquiry along with factual reports received from the Police Station, Tahla with the Governing Secretary and Commissioner, Rural Development and Panchayati Raj Department, Government of Rajasthan on 24.05.2021. A preliminary enquiry was
- E      initiated under Section 38(1) of the Rajasthan Panchayati Raj Act, 1994 read with Rule 22(2) of the Rajasthan Panchayati Raj Rules, 1996 and a charge sheet was issued on 16.06.2021. The appellant was suspended on 16.06.2021 pending the enquiry.
4. The submission of learned counsel for the appellant in substance
- G      is that this is an endeavour by the opponent who lost the elections to the appellant as the complainant is the son of this opponent. He also seeks to rely on the bail order to show that there was no case found out against the appellant. We may note that the learned counsel for the respondent, on the other hand, has referred to the order of the trial Court refusing bail. We have dealt with this aspect at the inception because we do
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believe that this line of submission from either side is really not germane to the controversy in question. We may add that the grant of bail is only as a result of investigations being complete and if we take the bail order as a reason for no *prima facie* case, it would put the law on its head more so, as we have been emphasizing that there is no reason to keep people in custody once investigation is complete unless there are heinous offences and propensity of the accused to indulge in further crime or influence witnesses.

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5. We now come to the meat of the matter which is Section 38 which refers to the removal and suspension. We reproduce the relevant portion as under:

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“38. Removal and Suspension.(1) The State Government may, by order in writing and after giving him and opportunity of being heard and making such enquiry as may be deemed necessary, remove from office any member including a Chairperson or a Deputy Chairperson of a Panchayati Raj Institution, who-

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- (a) refuses to act or becomes incapable of acting as such; or
- (b) is guilty of misconduct in the discharge of duties or any disgraceful conduct:

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xxx xxx xxx

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(4) The State Government may suspend any member including a Chairperson or a Deputy Chairperson of a Panchayati Raj Institution against whom an enquiry has been initiated under Sub-sec.(1) or against whom any criminal proceedings in regard to an offence involving moral turpitude is pending trial in a Court of law and such person shall stand debarred from taking part in any act or proceeding of the Panchayati Raj Institution concerned while being under such suspension.”

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6. It is respondents’ own case that they had made their preliminary inquiry not solely based on the police report (as set out in the counter affidavit) and found out a *prima facie* case of “*disgraceful conduct*”.

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7. The State Government has power to suspend a person in terms of Clause (4) of Section 38. The said provision has two limbs: a) against whom an inquiry had been initiated under Sub-Section (1) and; b) or against whom criminal proceedings in regard to an offence involving moral turpitude is pending trial in the Court of law.

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A 8. It is the say of the respondent that the action is being taken against appellant under the first part of the said provision.

9. Learned counsel for the appellant sought to contend that a reading of the order of suspension dated 16.06.2021 only refers to the initiation of the criminal proceedings in pursuance to the FIR but then on

B a bare reading of it, it does show that what is attributed for suspension is a conduct in terms of Clause (1). We may add that the suspension order cannot be said to be the most happily worded one. It is in these circumstances that we find that the ratio of the judgment in *Ajit Singh & Anr. v. Financial Commissioner and Secretary to Government and Anr.*<sup>1</sup> - would not apply as in that case, the formation of opinion of the Deputy Commissioner was found to be absent.

10. We do recognize an aspect of the submission of the learned counsel for the appellant that in cases of political rivalry, the process should not be permitted to be misused, more so, as the principles of service jurisprudence would not apply, as there is no question of restitution

D to the aggrieved party post determination of his conduct as the period for which the Sarpanch had to act, will not be restored to him. It is this submission which has weighed with us in considering what would be the appropriate direction to be passed in the present case.

11. We, at the cost of repetition, emphasize that the own stand of E the respondent is that the action is based on the enquiry held by the concerned officer in pursuance to the FIR. The sequitur would be that the proceedings in the criminal case would not weigh at this stage in determining the conduct of the appellant but would be dependent on the material presented before the competent authority against the appellant. F That being the position, the suspension can also not continue in an *ad infinitum* manner, more so, when it has not to await any criminal proceedings.

12. We thus are of the view that it is necessary to bring an end to the proceedings initiated under Section 38(1) of the said Act at the earliest and it is stated that the pleadings are complete. We are thus, of the view G that the respondent should conclude the proceedings on or before 30<sup>th</sup> April, 2022 and it will be the bounden duty of the appellant to cooperate with those proceedings so as not to delay the same. The result would be that the suspension order would continue to be operational till 30<sup>th</sup> April, 2022 alone.

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H <sup>1</sup>(2009) 16 SCC 308

13. Needless to say that it will be for the respondent(s) to establish the charge against the appellant *de hors* the registration of the FIR on the principles of such proceedings and not on the principles of criminal proceedings of proof beyond reasonable doubts. A

14. The appeal is disposed of in the aforesaid terms leaving parties to bear their own costs. B

Bibhuti Bhushan Bose

Appeal disposed of.