



131

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-12888-2025 (O&M)

Date of decision: 25.04.2025

Harish Sharma

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manoj Kaushik, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.

1. Present petition is preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking issuance of directions to respondents No.1 & 2 for taking appropriate steps against respondent No.3-Sub Divisional Magistrate, Badkhal, District Faridabad for interfering in a *sub judice* matter, arising out of FIR No.369 dated 15.06.2024 under Sections 148, 149, 323, 427 of the Indian Penal Code, 1860 (for short 'IPC') (Sections 307 & 212 of IPC were added later), registered at Police Station Suraj Kund, District Faridabad.



CONTENTIONS

2. Learned counsel for the petitioner, *inter alia*, contends that on 14.06.2024, the accused persons attacked the petitioner, his son and his nephew. The entire incident was recorded in the CCTV camera. The nephew of the petitioner, namely Vivek, sustained a serious head injury in the scuffle. Consequent to the same, FIR (*supra*) was registered and during the investigation, a Board of two doctors was constituted by the Civil Hospital, Faridabad. The said Board opined that the head injury (injury no.1) sustained by Vivek is dangerous to life, as evidenced by opinion dated 03.07.2024 (Annexure P-3). Subsequently, Section 307 of IPC was added to the FIR (*supra*) and final report under Section 173 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') was presented before learned Chief Judicial Magistrate, Faridabad. An application was moved seeking re-examination of the injuries sustained by Vivek, by PGIMS, Rohatak, which was dismissed vide order dated 03.12.2024 (Annexure P-5) citing efflux of time. The case was committed to the Court of Sessions, where charges were framed under Sections 148, 149, 323, 307, 427 of IPC against the accused.

3. Learned counsel for the petitioner further submits that respondent No.7, a relative of an accused, moved an application dated 21.03.2025 (Annexure P-7) before respondent No.3 seeking re-examination of the injuries sustained by Vivek by constituting a fresh Medical Board. Interfering in the

2025:PHHC:054268



judicial process, within a period of 06 days, respondent No.3 called for constitution of a fresh Medical Board, by the Chief Medical Officer, Faridabad (for short 'CMO'). Curiously, an opinion declaring the injury sustained to be grievous and not dangerous to life, was rendered, as reflected in letter dated 07.04.2025 (Annexure P-8). Respondent No.3 has far exceeded the scope of his power and has committed a grave error in interfering with a *sub judice* matter.

4. Notice of motion.

5. Learned State counsel appears on advance notice and could not justify the act and conduct of respondents No.3 to 6 by citing any judicial precedents.

6. Since the facts are apparent on record, in view of the settled law, the present case is being taken up for final disposal with the consent of learned counsel for the parties. The matter is being decided *in limine* to save the judicial time and also to save the litigation costs on part of the respondents.

ANALYSIS

7. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the alleged incident occurred on 14.06.2024 and the FIR (*supra*) was registered on the very next day. The victim, namely Vivek, was medically examined on



14.06.2024 itself, as evidenced by the Medico-Legal Report (Annexure P-2). Thereafter, the jurisdictional police requested for an opinion to be rendered with regard to the nature of the injuries sustained by Vivek. Accordingly, a two-member Medical Board was constituted and in the report dated 01/03.07.2024 (Annexure P-3), they opined the head injury sustained to be dangerous to life. An application was moved before learned Chief Judicial Magistrate, Faridabad seeking re-examination of the injuries sustained, however, the said application was dismissed vide order dated 03.12.2024 (Annexure P-5), as six months had already passed since the incident.

8. The matter was duly committed to learned Court of Sessions and charges were framed vide order dated 28.01.2025 (Annexure P-6). Thereafter, respondent No.7 filed an application before respondent No.3 making the same prayer for re-examination, which had already been denied by the competent Court. Shockingly, respondent No.3 decided to call for constitution of a fresh Medical Board to render another opinion on the nature of the injuries, in spite of being cognizant of the fact that the matter is currently under trial.

9. Further still, the CMO as well as the new Medical Board have acted on directions of respondent No.3, who clearly does not have any power to make any such orders. Curiously, they have also changed the finding rendered by the original Medical Board after 10 months and opined that the



head injury is grievous in nature, but not dangerous to life, which considerably favours the accused. The petitioner or the victim were neither associated nor a notice in this regard was issued before *de novo* examination of medical record.

10. A perusal of the record clearly indicates that respondent No.3 has *ex facie* overstepped his authority and acted beyond the scope of his power by encroaching upon the judicial functions of a Court of competent jurisdiction, during the pendency of a trial. The present controversy revolves around fundamental principles of law like due process of law, procedure established by law, the rights of the citizens and their protection from arbitrary state action, as well as fairness in administration of criminal justice, principle of natural justice, equity and fairplay, concept of separation of powers and doctrine of public trust and accountability.

11. The respondent No.3 has exceeded his jurisdiction by acting upon the ipse dixit of respondent No.7 who is a complete stranger having no *locus standi* or cause of action to represent on behalf of the accused in a matter which is *sub judice* pending trial before learned Additional Sessions Judge, Faridabad. This Court cannot turn Nelson's eye to the unjust intrusion made by respondent No.3 into the judicial functions, for which the powers solely vest in the judiciary being the natural and independent arbiter of the rights of the stakeholders involved in the case. The legislative mandate has established a due procedure of law and provided a structured legal system vesting separate



and distinct power of adjudication in judiciary alone. The accountability of the judicial actions is tested under the revisional and appellate jurisdiction. The executive overreach into the matters under the sole domain of judiciary has far-reaching consequences and if such encroachment upon the authority and functions of the judiciary is ignored, it would create chaos in the process of administration of justice. The respondent No.3 being an executive officer cannot issue any orders usurping the judicial function of the Courts. The Indian Constitution establishes a procedure of law and separation of powers. The judiciary alone is vested with the authority to make judicial decisions by adhering to the established procedural practices. Any order passed by an executive officer interfering in the judicial functions would be beyond his competence and jurisdiction leading to violation of principle of separation of power. A judicial officer is obligated to decide every dispute in consonance with law and prescribed procedure, unlike respondent No.3, who acted in consonance with his will and caprice. After nearly 10 months, the respondent No.3 has unjustly facilitated changing the original plank with new timber, which has seriously prejudiced the right of the petitioner, who has been condemned unheard.

12. The doctrines of 'due process of law' and 'procedure established by law' ensure fair and just legal proceedings. They further ensure coherence and uniformity by guaranteeing that all stakeholders are treated in a similar



manner, which strengthens public trust in the justice administration mechanism. No citizen can be deprived of his liberty under a procedure which is not reasonable, fair or just, such deprivation would be violative of Article 21 of the Constitution of India. A Constitution Bench of Hon'ble Supreme Court in *Maneka Gandhi Vs. Union of India and Another 1978(1) SCC 248* has articulated the protection enshrined under Article 21 of the Constitution of India and has held that Article 21 confers a fundamental right on every citizen and not to be deprived of his life or liberty except according to the procedure established by law and such procedure is not merely some semblance of procedure but such procedure must be reasonable, fair.

13. Once the legislature has categorically provided that, in administration of criminal justice, the adjudicatory powers would vest solely in the judiciary, any other deviation and intrusion by the executive in the same is prohibited and would be violative of the constitutional scheme. The power to adjudicate upon matters involving criminal law rests with the Courts alone and are subject to fair procedure, which includes four essential components i.e. due notice, opportunity of being heard, impartial and independent forum and orderly procedure. The power and scope of the executive magistracy is separate and distinct from that of the judicial magistracy. The executive magistrates in India primarily deal with issues of law and order, breach of peace and prevention of public nuisance and their role is administrative in

2025:PHHC:054268



nature, dealing with preventive measures, for instance, as provided by Sections 107, 135, 144, 150, 151 of Cr.P.C. etc.

14. Article 50 of the Constitution of India envisages that judiciary is separate from the executive. Section 6 of Cr.P.C. [*corresponding to Section 6 of the BNSS*] establishes (i) Court of Sessions (ii) Judicial Magistrates 1st Class and Metropolitan Magistrates (iii) Judicial Magistrates 2nd Class, and (iv) Executive Magistrates, apart from the High Court as Criminal Courts. The functions and scope of powers of the magistracy is provided under Section 3(4) (a) of Cr.P.C., which reads as under: -

“Section 3- Constitution of references

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(4) *Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters,*

(a) which involve the appreciation or shifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.” (emphasis added)

15. The Latin maxim ‘*expressio unius est exclusion alterius*’ accentuates the principle ‘*the express mention of one thing excludes all others*’. The legislative mandate has explicitly assigned the adjudicatory power to one

2025:PHHC:054268



branch (judiciary) therefore, such functions are implicitly excluded from the other branches (legislature and executive). Thus, it is clear that respondent No.3 has blatantly intruded into the domain of judicial process and failed to perform his duty within the four corners of statutory provisions. In this regard, a fruitful reference can be made to the judgment rendered by a nine-Judge Bench of the Hon'ble Supreme Court in ***I.R. Coelho (Dead) by LRs. Vs. State of T.N., 2007 AIR Supreme Court 861***, wherein the doctrine of the separation of powers, which is a part of the basic structure of the Constitution, was highlighted and the judiciary was tasked to check the abuse of power and arbitrary action by the executive. Speaking through Justice Y.K. Sabharwal, the Hon'ble Supreme Court held as under: -

“130. Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary.

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Exclusion of Judicial Review compatible with the doctrine of basic structure-concept of Judicial Review

136. Judicial review is justified by combination of 'the principle of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review' (Democracy through Law by Lord Styen, Page 131).

137. The role of the judiciary is to protect fundamental rights. A modern democracy is based on the twin principles of majority rule

2025:PHHC:054268



and the need to protect fundamental rights. According to Lord Styen, it is job of the Judiciary to balance the principles ensuring that the Government on the basis of number does not override fundamental rights.”

16. The concept of ‘rule of law’ has been precisely conceived by eminent jurist and constitutional theorist A.V. Dicey and culled out three postulates of Rule of Law, i.e. supermacy of law, equality before law, predominance of legal spirit, in his book *Introduction to Study of the Law of the Constitution*, in the following manner:

“We mean, in the first place, that no man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach part of law established in the ordinary legal manner before the ordinary Courts of the land. In this sense the rule of law is contrasted with every system of government based on the exercise by persons in authority of wide, arbitrary, or discretionary powers of constraint. (Page 110)

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We mean in the second place, when we speak of the "rule of law" subject to as a characteristic of our country, not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. (Page 114)

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There remains yet a third and a different sense in which the "rule of law" or the predominance of the legal spirit may be described as special attribute of English institutions. We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts; whereas



under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution. (Page 115)”

17. The principle was further articulated by a Constitution Bench of the Hon’ble Supreme Court in ***Rojer Mathew Vs. South Indian Bank Ltd. and others, (2020) 6 SCC 1*** and speaking through Justice Deepak Gupta, the following was held:

“352. If Rule of law is absent, there is no accountability, there is abuse of power and corruption. When the Rule of law disappears, we are ruled not by laws but by the idiosyncrasies and whims of those in power.”

18. The essential component of the Rule of Law is adherence to a fair procedure established by law and prevention of arbitrary abuse of power by the executive and ensuring accountability. Adherence to the concept of procedural fairness and, established judicial practices while exercising power during the judicial process within the framework of the Constitution as well as the criminal law, are essential features of the Rule of Law.

19. The judicial officers are required to perform their duty within the four corners of the statutory provisions and scrupulously follow the drill of the procedure prescribed therein. Similarly, the executive is under obligation to act fairly guided by good conscience and public interest. It is trite law that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. Further, the Hon’ble Supreme Court in ***Life Insurance Corporation of India Vs. Consumer Education and***



Research Centre, (1995) 5 SCC 482, has held that duty to act fairly is a part of fair procedure envisaged under Articles 14 and 21 of the Constitution of India. Every activity of the public authority or those under public duty must be received and guided by public interest.

20. It is painfully apparent that respondents No.3 to 6 have acted with malice and without any authority of law, with intent to influence the outcome of the trial pending before learned Sessions Court. It is well settled that actions of the executive, with an oblique or indirect object, will be attributed to ‘malice in law’. A two Judge Bench of the Hon’ble Supreme Court in **Kalabharati Advertising Vs. Hemant Vimalnath Narichania and others, (2010) 9 SCC 437** speaking through Justice Dr. B.S. Chauhan, has held as under:-

“25. The State is under obligation to act fairly without ill will or malice- in fact or in law."Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC 521, S.R. Venkataraman v. Union of India (1979) 2 SCC 491, State of A.P. v. GoverdhanlalPitti (2003) 4 SCC 739, BPL Ltd. v. S.P. Gururaja (2003) 8 SCC 567) and W.B. SEB v. Dilip Kumar Ray (2007) 14 SCC 568].”

2025:PHHC:054268



21. The Hon'ble Supreme Court has further elaborated the principle of public trust and accountability in ***Express Newspapers Pvt. Ltd. and others Vs. Union of India and others, (1986) 1 SCC 133***, where speaking through Justice A.P. Sen, following was observed: -

"120. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in *S. Pratap Singh v. State of Punjab, (1964) 4 SCR 733*. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an 'alien' purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in *General Assembly of Free Church of Scotland v. Overtown, 1904 AC 515*, 'that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bonafide for the purpose for which they are conferred. It was said by Warrington, C. J. in *Short v. Poole Corporation, (1926) 1 Ch 66* that :

"No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives, and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative."

In Lazarus Estates Ltd. v. Beasley, (1956) 2 QB702 at Pp. 712-13 Lord Denning, LJ. said :

2025:PHHC:054268



"No judgment of a Court, no order of Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

See also, in Lazarus case at p. 722 per Lord Parker, C.J. :

"Fraud' vitiates all transactions known to the law of however high a degree of solemnity." (emphasis added)

22. The present case is archetypal example of executive overreach usurping the power of judiciary, which is *ex facie* arbitrary, beyond jurisdiction and actuated by *mala fides* and oblique motives. The such scenario is befitting to the John Locke's timeless aphorism, which says: -

"where-ever law ends, tyranny begins, if the law be transgressed to another's harm; and whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not ceases in that to be a magistrate and acting without authority, may be opposed."

OBSERVATIONS

23. In the light of the above discussion, this Court has no hesitation to hold in unequivocal terms that only the Courts are the sole adjudicator of the rights of the parties under the legal framework in administration of criminal justice. Any such attempt to usurp the judicial functions by executive would be resisted by this Court fulfilling its role as a Constitutional Court, envisaged to be a defender and a guardian of the Constitution and Rule of Law. Any transgression by the executive into the domain of the judiciary would not only undermine the institutional accountability but also has the potential to demolish



the functional legal system in place creating complete chaos. When the legislative mandate has entrusted the adjudicatory function to the judiciary in administration of criminal justice, the executive cannot encroach upon the domain of the judiciary. Such an attempt is impermissible under the Constitutional framework.

24. Respondent No.3 has transgressed into the judicial functions of a trial Court and has subjected the petitioner to irreversible repercussions and consequences, which cannot be substantially redressed afterwards, if his actions are not immediately set aside. It is a trite law that when executive acts in violation of the principle of Rule of Law and separation of power, this Court has the power to step in to seek accountability qua such arbitrary action by invoking the doctrine of public trust and accountability.

25. The conduct exhibited by respondent No.3 reflects a complete disregard for the constitutional scheme. It is absolutely baffling as to how an Executive officer, so unhesitatingly, overstepped his jurisdiction and inflicted a legal injury with such audacity and an unfathomably blatant disregard for the rule of law and principles of natural justice. Respondent No.3 as well as the Medical Officers-respondents No.4 to 6 have conducted themselves in a manner, which reeks of *mala fide* and has aroused significant suspicion and the same deserves to be inquired into.

2025:PHHC:054268



26. Accordingly, unhesitatingly, the order passed by respondent No.3 directing constitution of a fresh Medical Board and opinion (Annexure P- 8) given by respondents No.4 to 6, members of the said Board, is set aside, in order to preserve the integrity of judicial process.

27. In view of the above, the present petition is disposed of. Learned trial Court is directed to proceed with the trial in accordance with law, without being influenced by the act and conduct of respondents No.3 to 7.

28. Further, this Court finds it appropriate to implead the Chief, Secretary, State of Haryana as respondent No.8 and Additional Chief Secretary, Department of Health, Government of Haryana as respondent No.9. Learned counsel for the petitioner undertakes to file an amended memo of parties, reflecting the same, within a period of one week from today.

29. Respondent No.8 is directed to order fact finding inquiry into the act and conduct of respondent No.3 while respondent No.9 is directed to inquire into the conduct of the CMO and Medical Board i.e. respondents No.4 to 6 constituted at the instance of respondent No.3, within a period of three days from the date of receipt of certified copy of this order.

30. Respondents No.8 & 9 are also directed to conclude their respective inquiries within a period of three weeks and submit the compliance report on or before the next date of hearing. They are further directed to take

2025:PHHC:054268



appropriate departmental action against respondents 3 to 7, if merited post-inquiry.

31. A copy of this order be supplied to the learned State counsel for strict compliance. Copy of this order be also sent to learned Additional Sessions Judge, Faridabad for information and compliance.

32. All the pending miscellaneous application(s), if any, shall stand disposed of.

33. Adjourned to 26.05.2025, for awaiting the compliance report from respondents No.8 & 9.

25.04.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No