

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-M-21451-2014(O&M)

Date of decision : 16.01.2015

Kuldip Chand

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.N.S.Dandiwal, Advocate
for the petitioner.

Mr.Sandeep Kumar Bansal, AAG, Punjab.

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') has been preferred for quashing proceedings under Section 182 of the Indian Penal Code (in short 'IPC') by Kalandra dated 31.10.2014 (Annexure P2).

Counsel for the petitioner contends that FIR No.133 dated 11.12.2011 for offence punishable under Sections 307, 452, 294, 489, 434, 506, 148, 149 IPC, Sections 25 & 27 of the Arms Act and Section 3 of the Prevention of Damage to Public Property Act was registered in Police Station Mehna, District Moga on the statement of the petitioner. During investigation, the police concluded that the above said FIR is false and result of party faction. The Superintendent of Police(H) recommended filing of cancellation report in the Court. It is argued that cancellation report was submitted in the Court on 11.12.2013 but the same was returned with a direction to conduct

further investigation. It is further argued that till the cancellation report prepared by the police is accepted by a competent Court, the Kalandra proceedings being pre-mature are liable to be quashed. It is further submitted that the Court is competent to take cognizance of the offence even if the investigating agency has filed cancellation report.

Counsel for the State, on the other hand, contends that the cancellation report was returned for further investigation but after investigation in compliance with the order of the Court, not an iota of truth has been found in the allegations set up by the petitioner, therefore, another cancellation report has been submitted before the Court. It is further argued that in the circumstances of the present case, the petitioner is not entitled to indulgence in exercise of inherent jurisdiction.

I have heard counsel for the parties and perused the records.

A bare reading of the allegations put forth in the petition while examined in the light of rival submissions made by counsel for the parties, it becomes an admitted position of the case that proceedings under Section 182 IPC were initiated against the petitioner even before the cancellation report was submitted in the Court much less accepted. There is no denial that the cancellation report submitted by the police did not find favour with the Court and the same was sent back with a direction to conduct further investigation vide order dated 18.01.2014. Counsel for the State has submitted that after investigation in compliance with the directions of the Court, again cancellation report has been submitted which is pending consideration before the Court. As per the settled position of law, the Court has the option to accept cancellation report or take cognizance on the basis of material available on record. Until the cancellation report is accepted by the Court, I find force in

the contention of the petitioner that proceedings under Section 182 IPC cannot be allowed to sustain being pre-mature.

In view of what has been discussed hereinabove, the petition is allowed, the proceedings under Section 182 IPC are quashed being pre-mature without prejudice to the rights of the State to initiate fresh proceedings in case the cancellation report is accepted by the Court.

Disposed of accordingly.

(REKHA MITTAL)
JUDGE

January 16, 2015.

DK