

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-33659 of 2014 (O&M)

.....

Date of decision:14.1.2015

Amarjit Singh and another

.....Petitioners

v.

State of Punjab and others

.....Respondents

....

Present: Mr. Parvinder Singh, Advocate for the petitioners.

Mr. S.S. Chandumajra, Deputy Advocate General, Punjab for
the respondent-State.

Mr. Kunal Siag, Advocate for respondent No.3.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing/setting aside the Calendra dated 31.1.2014 (Annexure-P.3) filed under Section 182 IPC in Police Station Mataur, District S.A.S. Nagar (Mohali) along with all subsequent proceedings arising therefrom, which has been illegally presented against petitioner No.1, with respect to alleged falsity of complaint No.473/P/SSP/N.G.R. Dated 26.4.2012, in spite of the fact that on the same facts, petitioner No.1 had already filed a criminal complaint in the Court of learned Judicial Magistrate Ist Class, Mohali and respondent No.3 has already been summoned in that complaint vide summoning order dated 4.7.2013 (Annexure-P.5) and further the aforesaid Calendra is time barred as the date of knowledge of respondent No.2 even as per the alleged story of the prosecution. The

present Calendra is beyond the period of limitation i.e. one year and hence, the Calendra and all subsequent proceedings arising therefrom are liable to be quashed.

Notice of motion has been issued in this case.

Mr. S.S. Chandumajra, learned Deputy Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Kunal Siag, learned counsel has appeared on behalf of respondent No.3, filed replies and contested this petition.

I have heard learned counsel for the petitioners and learned Deputy Advocate General, Punjab appearing for the respondent-State as well as learned counsel for respondent No.3 and have gone through the record.

It is not contested that the petitioner No.1 had filed complaint and summoning order has been passed. Therefore, on the same facts, on which a Calendra has been filed, by stating that petitioner No.1 has given false facts, a criminal complaint has been filed before the Magistrate and in that complaint on the same facts, respondent No.3 has been summoned. When the Court after considering the preliminary evidence found sufficient ground to summon the accused in that complaint, who is respondent No.3 in the present petition, then the Calendra under Section 182 IPC filed on the ground that the complainant filed a false complaint to the Police etc. is nothing but misuse of the process of the law.

Learned counsel for the petitioners has placed reliance on the judgment of this Court in Tarlochan Singh v. State of Punjab, 2007 (3)

R.C.R. (Cr.) 791, in which it has been held as under:-

“6. In **Banta Singh v. State of Haryana**, 1995 (3) RCR (Criminal) 133, the first information report lodged by the petitioner was found to be false during investigation and he was prosecuted for an offence under Section 182 IPC. The petitioner filed a complaint on the same facts and allegations on which he had made a statement before the police. The learned Magistrate had summoned the accused for various offences. It was held that the prosecution of the petitioner under Section 182 IPC during the pendency of the complaint was evidently an abuse of the process of the Court and the proceedings were quashed.

7. In **State of Punjab v. Brij Lal Palta**, AIR 1969 SC 355, it was held that once a complaint filed by the informant, which is based on the same facts and allegations on which the first information report was registered, is being proceeded with, it was not open to a Magistrate to take cognizance of any offence alleged to have been committed under Section 211 IPC unless there has been proper compliance with the provisions of Section 195(1)(b) Code of Criminal Procedure. It was further held that though the offence under Section 182 IPC was distinct from the one under Section 211 IPC, the latter was more serious and may include the offence under the former Section. The Magistrate could take cognizance of an

offence under Section 195(1)(a) Cr.P.C., but it would virtually lead to the circumvention of the provisions of Section 195(1) (b) Code of Criminal Procedure if proceedings under Section 182 IPC could continue, where the offence disclosed was covered by Section 211 IPC and a complaint was pending which had been filed by the informant on the same facts and allegations as were contained in his First Information Report. Similarly, on a parity of reasoning with regard to the offence under Section 211 IPC, no cognizance could be taken by the Magistrate for the alleged offence under Section 193 IPC, which was one of the Sections mentioned in Section 195(1) (b) Code of Criminal Procedure.

8. It is, thus, clear that if the case under Section 182 IPC is allowed to proceed, a decision in the said case would tantamount to pre-judging the complaint filed by the petitioner. The prosecution of the petitioner under Section 182 IPC during the pendency of his complaint on the same facts and allegations as mentioned in the FIR, would be an abuse of the process of the Court.”

I have gone through this judgment, which fully applies to the facts of the present case.

Learned counsel for the petitioners further placed reliance on the judgment of this Court in Kehar Singh v. State of Punjab, 2012 (1) R.C.R. (Cr.) 458, in which also it is held that the subject matter of the case

is sub-judice and the trial Magistrate is seized of the matter, relatable to truth or otherwise of the version projected by the petitioner in this context. In that eventuality, the proceedings under Section 182 IPC are not legally maintainable. Once the petitioner has filed a private complaint and the accused have been summoned, then it cannot be said that the same information supplied by the petitioner to Police was false. On the same point, learned counsel for the petitioners placed reliance on the judgment of this Court in Ramesh Chand v. State of Haryana, 2006 (4) R.C.R. (Cr.) 718. I have gone through all these judgments. These fully apply to the facts of the case.

No judgment has been relied upon by the learned counsel for respondent No.3 in reply to these judgments.

Keeping in view the facts and circumstances of the present case and the law as discussed above, the proceedings of Calendra are not legally maintainable when on the same facts the Court has summoned the accused and is seized of the matter.

Therefore, finding merit in this petition, the same is allowed. The Calendra filed under Section 182 IPC and all subsequent proceedings arising therefrom are quashed.

January 14, 2015.

(Inderjit Singh)
Judge

hsp