

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

**Crl. Misc. No.M-37593 of 2013
Date of decision : 17.03.2015**

Prithpal Singh

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Veneet Sharma, Advocate
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

ANITA CHAUDHRY, J(ORAL)

1. The petitioner has approached this Court for quashing Kalendra under Section 182 IPC titled as 'State Versus Prithpal Singh' and the order dated 23.05.2013, passed by the Magistrate. Petitioner is aggrieved as the Court has taken cognizance of the Kalendra filed by the SHO, Police Station Sultanwind when the complaint had been made to the Commissioner of Police, Amritsar and Deputy Commissioner, Amritsar.

2. The petitioner had given a complaint which was inquired into and the Assistant Commissioner of Police (Crime), Amritsar City gave a inquiry report dated 26.07.2012 finding the allegations to be incorrect. He also recommended initiation of proceedings under Section 182 IPC. On the recommendation of the inquiry officer, Kalendra dated 04.01.2013 was filed against the petitioner by the

officer incharge of the Police Station (Annexure P-2).

3. The petitioner has challenged the Kalendra as well as the order passed there on, on the premise that the complaint was addressed to the Commissioner of Police and the competent officer for filing the Kalendra could not have been the SHO of the concerned Police Station and the competent officer was the Commissioner of Police, Amritsar.

4. Section 195 Cr.P.C. reads as under:-

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, or attempt to commit, such offence, or
(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

5. A perusal of the above would show that the Court of competent jurisdiction can take cognizance of the offences punishable under Section 172 to 188 IPC only, on a complaint filed by public servant concerned or some other public servant to whom he is administratively subordinate.

6. The plea raised is that since the complaint was addressed

to the Commissioner of Police, Amritsar, he alone was competent to file a complaint in writing and SHO of the concerned Police Station was not competent public servant.

7. To support the submission, the petitioner has relied upon ***Vipan Kumar Khurana Vs. Manjit Kaur 2009(1) Lawdigital.in 1078 and Dr. Sham Lal Thukral Vs. State of Punjab 2009(4) CCC 292 (P&H).***

8. Solitary ground to challenge the Kalendra is that the same was not filed by the competent officer as provided under Section 195 Cr.P.C. A perusal of the complaint Ex.P1 would show that it was addressed to the Commissioner of Police and the Deputy Commissioner, Amritsar as such, he alone was an officer who could have filed the complaint and not the SHO.

9. In this regard, reference can be made to [Malkiat Singh vs. State of Haryana](#) 1999 (2) RCR (Criminal) 10, wherein it was held that in no uncertain terms that there is an absolute bar against the Court taking seisen of the case under Section 182 IPC except in the manner provided in Section 195 Cr.P.C.

10. In ***Randhir Vs. The State of Haryana and others, 2004 Cri.L.J. 479***, this Court took a view that for an offence of giving false information to public servant, complaint can be filed by public servant to whom a false information is given and the complaint filed by his subordinate was termed as improper.

11. Similar view is expressed in ***Harbans Singh Vs. State of Punjab and another, 1991 (3) RCR (Criminal) 113***. This Court

viewed that the Court cannot take cognizance of an offence under Section 182 IPC on a complaint filed by Sub Inspector of Police where the false complaint was made to Senior Superintendent of Police.

12. In my view, the position of law is very well and fully settled, which would not require any further elaboration.

13. To be fair to the respondent-State, its submission also needs to be noticed. It had been urged by learned State Counsel that it is the SHO who is the authority to inquire and investigate the case and the complaint was required to be addressed to the proper authority.

14. This submission was also raised in ***Rajwinder Kaur Vs. State of Punjab***, Crl. Misc. No. M-25188 of 2011, decided on 14.02.2013 and was rejected. A complaint can be made to any public servant and the public servant to whom the complaint is given only has the right to make a complaint. It is a case of action on a false complaint. The issue would be to whom the false complaint was addressed? Since the complaint was addressed to the Commissioner of Police, Amritsar, who was a public servant, then Section 195 Cr.P.C. would take care of the situation and the submission that the complaint could not have been addressed to any official other than SHO, would not be correct. Resultantly, the Kalendra could only be filed by the public servant to whom the complaint was addressed. Since the complaint was filed by the SHO, the cognizance of the offence under Section 195 Cr.P.C. could not have been taken. The petition is allowed. The Kalendra and the complaint as well as the

subsequent order passed on it is quashed. However, this would not be a bar for the competent officer to initiate proceedings for filing fresh Kalendra, in case it is so required.

(ANITA CHAUDHRY)
JUDGE

17.03.2015

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