

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-37608 of 2013 (O&M)
Date of Decision: January 12, 2015

Bhushan Kumar alias Bhupender and another

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek Khatri, Advocate
for the petitioners.

Mr.S.S.Pannu, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioners Bhushan Kumar alias Bhupender and Chander Shekhar have filed this petition under Section 482 Cr.P.C. for quashing of Calendra dated 24.10.2008 and the summoning order dated 24.12.2008 passed by learned Judicial Magistrate Ist Class, Hisar.

The facts as given in the petition are that on 12.08.2007 at around 5.30 A.M., petitioner No.1 proceeded from his house on his motorcycle and reached the house of his friend and asked him to lend a sum of ₹1 lac. At about 7.30 P.M., petitioner No.2 gave ₹1 lac to petitioner No.1. Thereafter, petitioners went to Hotel Midway and consumed liquor. Petitioner No.1 left behind petitioner No.2 and

proceeded towards Hisar and when he reached near Hindwah, a Maruti Car came from Balsamand side and signaled petitioner No.1 to stop. When petitioner No.1 was parking the motorcycle, then accused came out of the car and two accused caught hold the petitioner No.1 from behind and took out ₹1 lac from his pocket and one of the accused fired upon petitioner No.1 from a distance of 2-3 steps. The bullet pierced through the calf of petitioner No.1 and thereafter accused fled away from the spot in their car. The police found this story false and proceeded against the petitioners. Calendra under Section 182 IPC has been filed against the petitioners in which they have been summoned vide impugned order dated 24.12.2008.

Notice of motion was issued and learned State counsel appeared and contested the petition.

Learned counsel for the petitioners argued that when the Court has taken the cognizance relying on the version of the present petitioners and the accused have been summoned in the complaint case, then the presentation of Calendra is nothing but misuse/abuse of process of the Court. Therefore, he argued that Calendra and impugned summoning order in the Calendra should be quashed.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

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 information supplied by the petitioner 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 State counsel 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 12, 2015
Vgulati

(INDERJIT SINGH)
JUDGE