

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

**Crl. Misc. No. M-8443 of 2013
Date of decision: 09.02.2015**

Dr. Sawinder Singh and another

...Petitioners

versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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

Mr. Gurvir Sidhu, AAG, Punjab.

RITU BAHRI, J.

This petition under Section 482 Cr.P.C is for quashing of Kalandra dated 04.12.2012 titled as 'State through Ravinder Kumar, Inspector/SHO Vs. Piara Singh and another' (Annexure P-1) and the summoning order dated 04.12.2012 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Amritsar.

Piara Singh-petitioner No.2 made a complaint dated 10.05.2012 to the Incharge, Police Post Pul Tarawala, Amritsar alleging that on that day his son Dr. Sawinder Singh-petitioner No.1 was coming back to his house from the Court. Piara Singh was also coming behind him on his scooter. When his son reached near the roundabout of flats of New Amritsar, Kehar Singh (father-in-law of Swinder Singh) came in a grey coloured car and hit his the scooter of son Sawinder Singh with an intention to kill him, as a result thereof, Sawinder Singh suffered fracture on his left leg. The said complaint

was enquired into by the police, whereupon the allegations levelled by the petitioners were found to be false. Ultimately, the proceedings were initiated against the petitioners and Kalandra (Annexure P-1) under Section 182 IPC was presented in the Court. Thereafter, vide order dated 04.12.2012 (Annexure P-2) passed by the Judicial Magistrate, Ist Class, Amritsar, petitioners were summoned to face a trial.

On the basis of same allegations, petitioner No.2 has also filed a private complaint dated 11.06.2012 before the Judicial magistrate Ist Class, Amritsar, wherein vide order dated 29.01.2013 (Annexure P-3), the accused has been summoned to face trial under Sections 323, 326 IPC.

Quashing of Kalandra (Annexure P-1) is being sought on the ground that once on a complaint, the accused have been summoned to face trial, continuation of proceedings under Section 182 IPC would amount to an abuse of the process of Court.

Upon notice, reply on behalf of respondent-State by way of affidavit of Assistant Commissioner of Police (East), Amritsar, has been filed, admitting the factual position as stated in the petition.

At this stage, reference can be made to a judgment delivered by this Court in **Malkiat Singh Vs. State of Haryana**, 1999 (2) RCR (Crl.) 11, wherein it has been held that once a complaint has been filed and the same was not converted into an FIR, proceedings under Section 182 IPC could not be initiated against the petitioner. Further, in **Bimla Devi and others Vs. State of Punjab**, CRM-M-28471 of 2009 (decided on 31.08.2010), Kalandra under Section 182 IPC was quashed on the ground that in case the SHO has not registered the FIR and on the basis of enquiry in the complaint, the complaint was found to be false, the initiation of proceedings under Section

182 IPC were not permissible. A Coordinate Bench of this Court in **Tarlochan Singh Vs. State of Punjab**, 2007 (2) RCR (Criminal) 791 while placing reliance on **Banta Singh Vs. State of Haryana**, 1995 (3) RCR (Criminal) 133, had quashed the proceedings under Section 182 IPC during pendency of a complaint, in which summoning orders have been passed. In para Nos. 6 and 7 of the said judgment, it has been observed 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 Indian Penal Code. 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 Indian Penal Code 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 Supreme Court 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 Indian Penal Code unless there has been proper compliance with the provisions of Section 195 (1) (b) Criminal Procedure Code. It was further held that though the offence under Section 182 Indian Penal Code was distinct from the one under Section 211 Indian Penal Code, 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) Criminal Procedure Code, but it would virtually lead to the circumvention of the provisions of Section 195 (1) (b) Criminal Procedure Code if proceedings under Section 182 Indian Penal Code could continue, where the offence disclosed was covered by Section 211 Indian Penal Code 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 Indian Penal Code, no cognizance could be taken by the Magistrate for the alleged offence under Section 193 Indian Penal Code, which was one of the Sections mentioned in Section 195 (1) (b) Criminal Procedure Code.”

In the present case, after making a complaint by petitioner No.2, an enquiry was conducted by the police and the allegations were found to be false. Consequently, no FIR was registered. However, on similar set of allegations, the complainant/informant filed a complaint, whereupon the accused have been summoned to face trial. In such circumstances, initiation of proceedings under Section 182 IPC were not permissible.

Resultantly, in view of the judgments delivered in **Malkiat Singh**, **Babita** and **Tarlochan Singh's** case (supra), Kalandra dated 04.12.2012 titled as 'State through Ravinder Kumar Inspector/SHO Vs. Piara Singh and another' (Annexure P-1) and the summoning order dated 04.12.2012 (Annexure P-2) are quashed along with all consequential proceedings arising therefrom qua the petitioners.

Petition stands allowed accordingly.

(RITU BAHRI)
JUDGE

09.02.2015
ajp