

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 246

Criminal Miscellaneous No.M-42113 of 2013 (O & M)

Date of Decision: *February 16, 2016*

Sukhwinder Singh

..... PETITIONER

VERSUS

State of Punjab

..... RESPONDENT

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Amandeep Singh Rai, Advocate, for the petitioner.

Mr. Jaspreet Singh Sekhon, Assistant Advocate
General, Punjab.

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Jaspal Singh, J

1. Through the instant petition, Sukhwinder Singh has sought quashing of Calandra under Section 182 IPC dated January 27, 2009 (Annexure P-2) alongwith all subsequent proceedings relating thereto, recorded in pursuance to FIR No.166 dated July 18, 2008 (Annexure P-1) under Sections 323, 324, 341, 148, 149, 506, 511 IPC (Section 326 IPC added lateron), registered at Police Station, Sadar Ludhiana.

2. It is an undisputed fact that even after presentation of kalandra under Section 182 IPC (Annexure P-2), further investigation in connection with FIR No.166 dated July 18, 2008 (Annexure P-1) was carried out and ultimately, the investigating agency came to the conclusion that the allegations levelled by the petitioner are prima facie established. Accordingly, report under Section 173(2) Cr.P.C. was presented against the accused named in the FIR, in which, Harpal Singh & others were tried but subsequent thereto, they entered into a compromise with Sukhwider Singh (petitioner), on the basis of which, Criminal Miscellaneous No.M-33021 of 2014 was filed for quashing the above mentioned FIR and said petition was allowed by this Court vide judgment dated December 14, 2015 whereby the FIR as well all subsequent proceedings arising therefrom were quashed.

3. By now, it is pretty settled that proceedings initiated by the police under Section 182 IPC are not legally sustainable, especially in the circumstances that on the basis of allegations contained in FIR, the persons named as accused, after further investigation, were tried and ultimately FIR was quashed, as has been referred to above. The Calandra presented against petitioner – Sukhwinder Singh and proceedings in pursuance thereof are not maintainable, especially in view of the submission of report under Section 173(2) Cr.P.C., on the basis of same allegations, on which, proceedings under Section 182 IPC were initiated.

4. In Banta Singh vs. State of Haryana, 1995(3) RCR (Criminal) 133, first information report was registered at the instance of petitioner, the contents of which were found to be false during investigation and the proceedings under Section 182 IPC were initiated against him. The petitioner filed a complaint on the same set of allegations, on which, he had lodged a complaint with the police. Accused were summoned to face trial. It was held that the prosecution of the petitioner under Section 182 IPC during pendency of the complaint, was clearly an abuse of process of court and the proceedings were quashed. Similarly, the Hon'ble Apex Court in Gopal Vijay Verma vs. Bhuneshwar Prasad Sinha, 1982(3) SCC 510 and H.S. Bains vs. State (Union Territory of Chandigarh), AIR 1980 Supreme Court 1883 has held that Magistrate, even after accepting the final report, after hearing the complainant, can still take cognizance upon a complaint on the same or similar allegations of fact. Identical observations were made by a Division Bench of Patna High Court in case Munilal Thakur vs. Nawal Kishore Thakur, 1985 Criminal Law Journal 437 which was subsequently relied upon by this Court in Ramesh Chand vs. State of Haryana, 2006(4) RCR (Criminal) 718.

5. Taking into consideration aforesaid aspect of the case and the observations made in the above referred judgments, this Court is of the considered view that initiation of proceedings against the petitioner under Section 182 IPC is nothing but an abuse of the process of court.

Thus, kalandra dated January 27, 2009 (Annexure P-2) alongwith all subsequent proceedings relating thereto, initiated in relation to FIR No.166 dated July 18, 2008 (Annexure P-1) under Sections 323, 324, 341, 148, 149, 506, 511 IPC (Section 326 IPC added lateron), registered at Police Station, Sadar Ludhiana, are quashed, by way of acceptance of the petition.

February 16, 2016
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(Jaspal Singh)
Judge