

In the High Court of Punjab and Haryana at Chandigarh

.....
(1) Criminal Misc. No.M-9522 of 2012 (O&M)

.....

Date of decision:3.2.2016

Maan Singh

.....Petitioner

v.

State of Punjab and others

.....Respondents

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(2) Criminal Misc. No.M-1412 of 2013 (O&M)

.....

Bachittar Singh

.....Petitioner

v.

State of Punjab and another

.....Respondents

....

(3) Criminal Misc. No.M-8325 of 2013 (O&M)

.....

Rekha Rani

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Present: Ms. Rupinder K. Thind, Advocate for the petitioners in Cr.
Misc. Nos.M-9522 of 2012 and 1412 of 2013.

Mr. Rajeev Sharma, Advocate for the petitioner in Cr.
Misc. No.M-8325 of 2013.

Mr. Varun Sharma, Assistant Advocate General, Punjab
for the respondent-State.

Mr. K.D.S. Sodhi, Advocate for respondent No.3 in Cr.
Misc. No.M-9522 of 2012.

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Inderjit Singh, J.

This order will dispose of the above mentioned three petitions

filed under Section 482 Cr.P.C. for quashing of Calendra No.12 dated 24.3.2011 (Annexure-P.2) and Rapat No.18 dated 24.3.2011 (Annexure-P.3) under Sections 182, 120-B, 109 and 211 IPC and order dated 25.3.2011 (Annexure-P.4) passed by learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi, whereby the petitioners have been summoned in above mentioned challan/Rapat and order dated 25.8.2011 (Annexure-P.6) by which charges have been framed against the petitioners and others, as the same arise out of the same calendra.

Notice of motion has been issued in these cases.

Mr. Varun Sharma, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. K.D.S. Sodhi, learned counsel has appeared on behalf of respondent No.3 in Cr. Misc. No.M-9522 of 2012 and contested these petitions.

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

At the time of arguments, learned counsel for the petitioners mainly argued on one point that as per the prosecution version, Rekha Rani filed the complaint to the Deputy Superintendent of Police, but the calendra was presented by the SHO. It is also argued that the other two persons Maan Singh and Bachittar Singh have not filed any complaint which can be stated to have been found false. The only allegation is that it is at the instance of Bachittar Singh and Maan Singh that Rekha Rani filed false

complaint.

On the other hand, learned counsel for private respondent No.3 has not contested the fact that the complaint was filed to DSP, whereas the calendra has been filed by the SHO. It is admitted that no complaint was filed to SHO which was found false.

Learned counsel for the petitioners placed reliance on the judgment of Hon'ble Supreme Court in Daulat Ram v. State of Punjab, AIR 1962 SC 1206, wherein it has been held that the report to Tehsildar to take action on averment of certain facts was found false. Offence under Section 182 IPC is complete even if no action is taken on the report. Complaint must be in writing by the Public Servant concerned. The trial under Section 182 IPC without Tehsildar's complaint in writing is without jurisdiction *ab initio*. Conviction cannot be maintained and the same was set aside. I have gone through the law laid down in this judgment which fully applies to the facts of the present cases.

Learned counsel for the petitioners further placed reliance on the judgment of this Court in Malkiat Singh v. State of Haryana, 1999 (2) R.C.R. (Cr.) 10, wherein it has been held that complaint under Section 302 I.P.C. was sent to Superintendent of Police but the FIR was not registered. The SHO, however, making investigation and found that allegations were false, proceedings under Section 182 Cr.P.C. lodged by SHO before the Magistrate, it was held that the SHO is not competent to make complaint. Complaint could be filed by S.P. of Police to whom the alleged false complaint was sent.

On the same facts, learned counsel for the petitioners further

placed reliance on the judgment of this Court in Babita v. State of Punjab and another, 2008 (4) R.C.R. (Cr.) 516. In this case also, criminal complaint was filed before SSP, but the FIR was registered by SHO on the basis of complaint. Complaint was found false and in this case it was held that complaint in writing could be made by SSP and not by SHO.

I have gone through the law laid down in all these judgments, which fully applies to the facts in the present cases. In the present cases, complaint was made to the DSP, but there is no written complaint by the DSP, rather, the calendra has been presented by the SHO. Therefore, the SHO cannot file the calendra, but it can only be filed on the written complaint of the DSP, to whom the complaint was made, which was found false.

Therefore, from the above discussion, I accept all these petitions and Calendra No.12 dated 24.3.2011 (Annexure-P.2) and Rapat No.18 dated 24.3.2011 (Annexure-P.3) under Sections 182, 120-B, 109 and 211 IPC and order dated 25.3.2011 (Annexure-P.4) passed by learned Sub Divisional Judicial Magistrate, Sultanpur Lodhi, whereby the petitioners have been summoned in above mentioned challan/Rapat and order dated 25.8.2011 (Annexure-P.6) by which charges have been framed against the petitioners and others and all subsequent proceedings arising therefrom are hereby quashed.

February 3, 2016.

Inderjit Singh)
Judge

hsp