

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M-33561-2015 (O&M)

Date of decision: April 19, 2017

Balbir Singh

... Petitioner

v.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri S.S. Sandhu, Advocate for the petitioner.

Shri Daljeet Virk, Deputy Advocate General, Punjab.

Shri Abhijeet Partap, Advocate for respondent No.2.

A.B. Chaudhari, J. (Oral):

Rule. Heard forthwith.

Learned Counsel for the respondent No.2 prays for an adjournment for arguments. The petition is pending in this Court since 2015. The petition was adjourned on number of occasions. The prayer for adjournment is rejected.

Heard learned Counsel for the rival parties. This is a petition with the following prayers:-

“Petition under Section 482 Cr.P.C. seeking quashing of the Kalandra Annexure P-9 and complaint under Section 195 Cr.P.C. Annexure P-10 pending before the Court of Karandeep Kaur, JMIC Ludhiana and for quashing/set aside the summoning order dated 15.01.2015 Annexure P-11 passed by Ld. Jagmilap Singh Khushdil, JMIC Ludhiana and for quashing/set aside all the other incidental and consequential proceedings and orders passed thereof.”

It is not in dispute that the petitioner is the younger brother of respondent No.2. The said respondent No.2 resides in India while the petitioner resides in the United Kingdom, London. The nature of dispute is in relation to the property and in particular the Will executed by the father of the petitioner and respondent No.2. It clearly appears that the petitioner had lodged a complaint with the Commissioner of Police, Ludhiana on 22.12.2010 alleging that he had come from London and he found that the ancestral house was demolished and the theft was committed and the articles were stolen. The complaint was not inquired into for about two years. He again complained to the higher authorities on 18.2.2011. The complaint was never inquired into for a long time and kept pending. This itself suggests that the offence alleged by the petitioner about the theft ought to have been inquired into immediately after the lodgment of the complaint to the concerned police station but that was not done for more than two years. Thereafter, the respondent No.2 filed a complaint saying that the complaint filed by the petitioner was false and, therefore, action should be taken against the complainant. Obviously, at the relevant time, the petitioner was residing in London and his worthy elder brother, i.e. respondent No.2 wanted to take advantage of the possession of the ancestral property. Acting on the complaint filed by the respondent No.2, the police has prepared a kalendra report. In the kalendra, it is stated that during the course of inquiry, the complainant Sukhdev Singh stated as under:-

“... The complainant Sukhdev Singh got recorded his statement and also produced the conclusion reports and photocopies of the complaints moved against him i.e. CR No.1906 DR-908 dated 17.2.2011 and 5-5C dated 22.12.2010, at Police Station

NRI Ludhiana. However, during the course of enquiry the opposite party Balbir Singh did not record any statement or produced any document and therefore no truth came to light. The complaints moved by Balbir Singh on being found false, the complaint No.CR-1906-DR 908 dated 7.2.2011 has been filed in record on 24.8.13 by the worthy Police Commissioner which has been found to be false....”

It is clear from the above that there is absolutely no material on record as to on what basis the inference has been drawn by the concerned police officer that the complaint that has been filed by the petitioner in 2010 was false and, therefore, action under Section 195 Cr.P.C. was required to be taken. The said Kalendra report thus is sans any specific material or evidence. It clearly appears that respondent No.2 being in India was clearly favoured by the concerned police officer by preparing such a Kalendra which does not contain any material or even remotely any evidence that the complaint filed by the petitioner in the year 2010 was false.

Learned Counsel for the respondent No.2 asked for adjournment to produce the material and documents on record to show that the report was false. Whether the report was false or not cannot be investigated by respondent No.2 and it was for the police machinery to place on record the materials to show that the report was false. Therefore, it is no use granting any time to respondent No.2 for filing any document. This Court has to look into the Kalendra as it is and as earlier held there is absolutely no evidence even remotely to hold that the report lodged by the petitioner in the year 2010 is false. On the contrary, no investigation into the report lodged by the petitioner for more than two years was made for which there is no explanation.

The upshot of the above discussion is that the Kalandra will have to be quashed and set aside being the abuse of process of law.

This Court wanted to impose costs on respondent No.2. However, looking at the relationship between the parties namely elder brother and younger brother, this Court does not want to do so. Hence, no order of costs is being made. In the result, I make the following order:-

ORDER

1. Rule is made absolute.
2. Kalandra Annexure-P-9, complaint under Section 195 Cr.P.C. Annexure P-10 and the summoning order dated 15.01.2015 Annexure P-11 are quashed and set aside.
3. No orders as to costs.

April 19, 2017

pankaj

**[A.B. Chaudhari]
Judge**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No