

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

**CRM-M No.34231 of 2015
Decided on: 26.09.2017**

Sharda Devi

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Satbir Rathore, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing the kalendra bearing DD No.6 dated 28.03.2015 (Annexure P9) filed under Section 182 of the Indian Penal Code (in short 'IPC') and for quashing the summoning order dated 06.06.2015 (Annexure P10) along with all subsequent proceedings arising therefrom.

Brief facts of the case are that the petitioner filed a complaint to the Superintendent of Police, Karnal (Annexure P1) on 05.07.2012 with the allegations that on an earlier occasion i.e. on 09.06.2012, the son of the petitioner namely Arjun was given merciless beating and his legs were broken and he was bed ridden. It was also stated that the injuries to son of the petitioner was given by Rahul @ Mintu, Pankaj and Sukhwinder on the asking of the accused persons. It was also submitted that on 04.07.2012, the accused persons namely Norti Ram, Rajinder, etc. entered the house of the petitioner and threatened her to withdraw the case relating to her son. Thereafter,

another application dated 20.06.2013 was filed, however, no action was taken. The Superintendent of Police, Karnal issued a warning (Annexure P4) on 03.12.2012 to the SHO, Police Station Kunjpura because the complaint moved by the petitioner was marked to him, however, no case was registered. Thereafter, the FIR No.268 dated 15.11.2013 was registered against the accused persons under Sections 452, 506 read with Section 34 IPC at Police Station Kunjpura, District Karnal. After registration of this FIR, Rajinder Kumar/accused gave a complaint to the Superintendent of Police, Karnal on 24.02.2014 (Annexure P5) stating therein that he is an innocent person. After a gap of 06 months again, another application was given on 04.07.2014 stating that on the date and time given in the FIR, he was not present in the village and had gone to Gurudawara at Ponta Sahib.

Later on, after the investigation, the police submitted a cancellation report under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') on 14.09.2014 observing that the accused persons were not found involved in the case. Accordingly, the SHO, Police Station Kunjpura, submitted the impugned kalendra under Section 182 IPC against the petitioner on 28.03.2015 in which the trial Court issued the notice to the petitioner vide impugned order dated 06.06.2015 (Annexure P10).

Counsel for the petitioner has submitted that the cancellation report submitted in FIR No.268 dated 15.11.2013 has not been accepted by the trial Court till date and the petitioner has filed a criminal complaint in the shape of a protest petition i.e. criminal case No.26 of 2015, which is pending before the trial Court along with the

cancellation report and the same is stated to be fixed for recording the evidence of the complainant.

Counsel for the petitioner has made two fold submissions. The first submission made by counsel for the petitioner is that a report submitted under Section 182 IPC before the acceptance of the cancellation report by the trial Court is not maintainable. Secondly that since the petitioner has made a complaint before the Superintendent of Police, Karnal, therefore, the recommendation of 182 IPC proceedings by the SHO, P.S. Kunjpura who is not the same authority with whom the petitioner has filed the complaint, therefore, is not competent to submit the impugned kalendra.

In support of his arguments, counsel for the petitioner has relied upon the judgment ***“Babita vs State of Punjab and another”***, **2008(4) RCR (Criminal) 516**, wherein this Court has held that the complaint which was filed before the Senior Superintendent of Police whereas the kalendra was presented under the signatures of the SHO will not be maintainable as per the provisions of Section 195(1)(a) Cr.P.C. In this judgment, this Court relied upon the judgment passed by the Hon'ble Supreme Court in ***“Daulat Ram vs State of Punjab”***, **AIR 1962 Supreme Court 1206**, wherein it is held as under:-

“3. The only question in this case is whether a complaint in writing as required by Section 195 had been presented by the public servant concerned. The public servant who was moved by the appellant was undoubtedly the Tehsildar. Whether the appellant wanted the Tehsildar to take action or not, the fact remains that he moved the Tehsildar on what is stated to be a false averment of facts. He had charged Hans Raj and Kans Raj with offences

under the Penal Code and he had moved his superior officer for action even though he might have stated in the letter that it was only for his information. We are prepared to assume that he expected that some action would be taken. In fact his second letter that he had compromised the matter and the proceeding might be dropped clearly shows that it anticipated some action on the part of his superior officer. The question is therefore whether under the provisions of Section 195, it was not incumbent on the Tehsildar to present a complaint in writing against the appellant and not leave the court to be moved by the police by putting in a charge-sheet. The words of Section 195 of the Criminal Procedure Code are explicit. The section read as follows :-

"(1) No Court shall take cognizance - (a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code. except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;"

The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of Section 195. The words "no court shall take cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.

4. Now the offence under Section 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that Section 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar." (Sic This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of Section 195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained."

Counsel for the petitioner has further relied upon the judgments titled as “***Randhir vs State of Haryana and others***”, 2003(4) RCR (Criminal) 651, “***Kulwinder Singh vs State of Punjab and another***”, 2008(4) RCR (Criminal) 418, wherein similar view has been taken by this Court.

Counsel for the petitioner has also relied upon the judgment passed by this Court “***Tarlochan Singh vs State of Punjab***”, 2007(3) RCR (Criminal) 791, wherein it is held that till the acceptance of a cancellation report by the Court, a case under Section 182 IPC cannot be allowed to proceed as it would tantamount to pre-judging the complaint filed by the person against whom such proceedings under Section 182 IPC are initiated. The operative part of this judgment reads as follows:-

***“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.

8. It is, thus, clear that if the case under Section 182 Indian Penal Code 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 Indian Penal Code 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.

9. Resultantly, this petition succeeds. Calendra dated 8.5.2005 (Annexure P-1) and all the subsequent proceedings taken in pursuance thereof and pending in the Court of Judicial Magistrate 1st Class, Ludhiana are hereby quashed.

Petition allowed.”

Similar view has been taken by this Court in “**Shiv Kumar Grover and another vs State of Punjab**”, 2013(1) RCR (Criminal) 57.

Counsel for the State, on the other hand, has submitted that during the course of enquiry of the FIR, it was found that the accused persons were not present in the village and, therefore, the cancellation report was submitted in the aforesaid FIR on the basis of the investigation conducted by the police. However, the fact that the

petitioner has already filed a protest petition by way of filing a criminal complaint is not denied in the affidavit filed by the Deputy Superintendent of Police, City Karnal, who had filed the reply on behalf of respondents No.1 and 2.

After hearing counsel for the parties, I find merit in the submissions made by counsel for the petitioner. Admittedly, the cancellation report filed in the aforesaid FIR is not accepted by the trial Court, so far and the protest petition filed by the petitioner is also pending adjudication before the trial Court. A perusal of the complaint as well as the FIR show that the petitioner has given a complaint to the Superintendent of Police, Karnal whereas the proceedings under Section 182 IPC have been initiated by the SHO, P.S. Kunjpura. Needless to say that on one point of time, a warning was issued to the SHO, P.S. Kunjpura by Superintendent of Police, Karnal for not registering the FIR.

In view of the discussions made hereinbefore, the petition is allowed, the kalendra bearing DD No.6 dated 28.03.2015 filed under Section 182 IPC and summoning order dated 06.06.2015 are ordered to be quashed along with all subsequent proceedings arising therefrom.

(ARVIND SINGH SANGWAN)
JUDGE

26.09.2017
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No