

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23670-2014 (O&M)
Date of decision: 19.07.2018

Seema Raj Kaushik

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ramesh Chahal, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of calendra DD No.28 dated 08.10.2012 under Section 182 of the Indian Penal Code (for short 'IPC'), Police Station City Narwana and all the subsequent proceedings arising therefrom.

Brief facts of the case are that the petitioner had given a complaint to the Superintendent of Police, Jind on 24.08.2012 (Annexure P-2) regarding information with regard to theft committed in Holy Hospital, Narwana and for registration of a case.

Learned counsel for the petitioner submits that as per the complaint, the petitioner has given information to the Superintendent of Police, Jind that the petitioner is owner of Plot No.6, Holy Hospital, Narwana

and a case regarding ownership of the building, furniture and machinery is pending before the Civil Court, with Dr. Sushil Sharma, who is elder brother of husband of the petitioner. It is further stated that the property was given to him as a licensee and the licence was terminated on 20.08.2011. On 15.08.2012, she had gone to her house at Narwana and came to know that a theft is committed in the hospital and on verification, she found that Dr. Sushil Sharma has inaugurated a new hospital in Model Town, Narwana on 09.03.2012 and he has taken all the articles and machines to this hospital. It is further stated in the complaint that since 09.03.2012, the Holy Hospital is lying closed and its keys are with Dr. Sushil Sharma.

Learned counsel for the petitioner further submits that the proceedings under Section 182 IPC have been initiated with reference to the aforesaid complaint, with reference to the allegations, which reads *“if the articles are stolen from the hospital, then Dr. Sushil Sharma is directly or indirectly responsible for the same.”* It is further stated in the complaint that under the garb of Civil Court order, the machinery and other articles have been removed by him, for which he has no right and therefore, legal action be taken. It is thus submitted that in fact, there is a civil dispute between the petitioner and Dr. Sushil Sharma and the complaint was made to the Superintendent of Police, Jind in the shape of information that if any articles are removed from the hospital, Dr. Sushil Sharma will be directly or indirectly responsible for the same and the hospital is lying closed since 09.03.2012 and the keys and articles are with him.

Learned counsel for the petitioner has further submitted that thereafter, the police investigated the case and submitted the calendra under

Section 182 IPC on a premise that the petitioner has given a false complaint of theft against Dr. Sushil Sharma and on verification, the commission of offence of theft is not verified and therefore, the petitioner has levelled false allegation in the complaint. It is further submitted that even otherwise, the complaint was made to the Superintendent of Police, Jind and kalendra under Section 182 IPC has been presented by the SHO, Police Station City Narwana.

Learned counsel for the petitioner has relied upon **Babita Vs. State of Punjab and another, 2008 (4) RCR (Crl.) 516**, wherein, in similar circumstances, when a complaint was given to the SSP, Ludhiana and on verification, the same found containing false information and the proceedings under Section 182 IPC were initiated by SHO of the concerned police station, then this Court has quashed the kalendra.

The operative part of the judgment in **Babita's** case (supra) is reproduced as under: -

*“As far as second contention of counsel for the petitioner regarding the kalendra being incompetent on the ground that the same has been filed under the signatures of SHO, Police Station, Model Town, Ludhiana whereas the complaint was made to SSP, Ludhiana is concerned, the issue has been considered in detail by this Court in **Criminal Misc. No.60096-M of 2004 (Surjit Singh v. State of Punjab) decided on 6.2.2008**, wherein relying upon judgment of Hon'ble the Supreme Court in **Daulat Ram v. State of Punjab, AIR 1962 Supreme Court 1206**, it has been opined that if the prosecution is to be launched under Section 182 IPC, the complaint in writing should be made by the public servant concerned and not by any other person. Paras 3 and 4 of the judgment can be referred for reference which read 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."

*In **State of U.P. v. Mata Bhikh & Others, (1994) 4 SCC 95** following the judgment of Daulat Ram's case (supra), Hon'ble the Supreme Court opined as under:-*

"A cursory reading of Section 195(1)(a) makes out that in case a public servant concerned who has promulgated an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate, i.e., some other public servant who is his official superior and under whose administrative control he works."

*Similar view has been expressed by Hon'ble the Supreme Court in a recent judgment in **P.D.Lakhani and another v. State of Punjab and others, 2008 AIR SCW 3357** relying upon its earlier judgment in Daulat Ram's case (supra) and Mata Bhikh's case (supra). Relevant para thereof is extracted below:-*

"No complaint, therefore, could be lodged before the learned Magistrate by the Station House Officer. Even

assuming that the same was done under the directions of Senior Superintendent of Police, Jalandhar, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore, cannot be done by an inferior officer. It does not provide for delegation of the function of the public servant concerned.

We may notice that in terms of sub-section (3) of Section 340 of the Code, a complaint may be signed by such an officer as the High Court may appoint if the complaint is made by the High Court. But in all other cases, the same is to be done by the presiding officer of the court or by such officer of the court as it may authorize in writing in this behalf. Legislature, thus, wherever thought necessary to empower a court or public servant to delegate his power, made provisions therefor. As the statute does not contemplate delegation of his power by the Senior Superintendent of Police, we cannot assume that there exists such a provision. A power to delegate, when a complete bar is created, must be express; it being not an incidental power."

Even on this ground, the case set up by the petitioner deserves acceptance as admittedly the complaint was filed before the SSP, Ludhiana whereas kalendra was presented under the signatures of SHO.

For the reasons mentioned above, the impugned kalendra Annexure P.1 presented to the Magistrate and all proceedings subsequent thereto are quashed.

The petition is disposed of."

In reply, learned State counsel, on the basis of affidavit filed by Deputy Superintendent of Police, Narwana, District Jind, has submitted that

on receiving the complaint (Annexure P-2) filed by the petitioner, an enquiry was conducted by ASI Krishan Kumar of Police Station City Narwana and the allegations levelled by the petitioner were found false and therefore, vide DDR No.28 dated 08.10.2012, calendra under Section 182 IPC was filed against the petitioner.

Learned State counsel, on instructions from ASI Roshan Lal, has further submitted that the proceedings before the Magistrate are still at the initial stage and no evidence has been recorded so far.

After hearing learned counsel for the parties and carefully going through the allegations in the complaint (Annexure P-2), I find that though in the subject, it is mentioned that a case be registered regarding theft in Holy Hospital, Narwana, however, the contents of the application show that in fact, the petitioner has given an information to the police that she came to know on 15.08.2012 that Dr. Sushil Sharma has opened a new hospital in Model Town, Narwana and he has taken all the articles and machinery to the newly opened hospital and the Holy Hospital is lying closed since 09.03.2012 and its keys are still with Dr. Sushil Sharma and therefore, she had informed the police that if any articles are removed/stolen, the responsibility will be of Dr. Sushil Sharma directly or indirectly, as the matter is subjudice before the Civil Court and there is an order of status quo.

As such, I do not find that from the contents of the application itself, there were direct allegations against Dr. Sushil Sharma that he has committed the offence and rather the complaint was lodged giving the information to the police about the state of affair of hospital as on 09.03.2012. Even otherwise, the complaint was admittedly addressed to the Superintendent

of Police, Jind, whereas the impugned calendra under Section 182 IPC is initiated by the SHO, Police Station Narwana, therefore, in view of the judgment of this Court in **Babita**'s case (supra), I hold that the SHO was not competent to file the calendra.

In view of the above, this petition is allowed and the impugned calendra DD No.28 dated 08.10.2012 under Section 182 IPC, registered at Police Station City Narwana and all the subsequent proceedings in pursuance thereto are ordered to be quashed.

[ARVIND SINGH SANGWAN]
JUDGE

19.07.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No