

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

Sr.No.120

**Criminal Misc.M-26590 of 2014
Date of Decision:27.08.2018**

Mahabir Singh Balmiki

....petitioner

Versus

State of Haryana and another

.... respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Abhishek Sethi, Advocate
for the petitioner

Mr.Naveen Sheoran, DAG Haryana

Mr.Naresh Kumar, Advocate
for respondent No.2

ARVIND SINGH SANGWAN, J. :

Prayer in this petition is for quashing of Kalandra under Section 182 IPC bearing No.1/PC/397/1 of 2013/20.09.2013 (Annexure P2).

Learned counsel for the petitioner submits that the petitioner had lodged a complaint with the Superintendent of Police, Panipat, against respondent No.2-Ram Lubaya, under the provisions of SC/ST Act and under relevant Sections of the Indian Penal Code. The complaint was marked to Deputy Superintendent of Police, City Panipat, for investigation. The Deputy Superintendent of Police, City Panipat, during enquiry, after joining

the petitioner as well as the other persons and some respectables of the village, concluded that as per the mobile tower location of the accused persons, they were not found present at the spot and therefore, the allegations levelled by the petitioner are false. A copy of the inquiry report dated 09.01.2013 is attached as Annexure P1.

Based on the said inquiry, the SHO Police Station (City) Panipat, submitted a Kalandra under Section 182 IPC (Annexure P2), before the Illaqa Magistrate. The present petition has been filed challenging the aforesaid Kalandra under Section 182 IPC.

Reply by way of affidavits dated 05.11.2014 and 17.08.2016 both by DSP (H.Q.), Panipat, and DSP (City) Panipat, are on record.

It is worth mentioning here that this petition is pending since 2014. On 29.05.2015, passing of the final order was stayed.

It is also worth noticing that vide order dated 22.09.2016, the present petition was allowed on the premise that it was stated by the petitioner that the proceedings under Section 182 Cr.P.C. are not maintainable as in his complaint notices are issued to respondent. Later on, the petitioner filed an application praying for recalling of the said order stating that the petitioner had only represented that he had filed a complaint but somehow it was recorded in the order dated 22.09.2016 that the accused have been summoned. Therefore, vide order dated 14.09.2017, the order dated 22.09.2016 was recalled and the case was again listed for arguments.

Learned counsel for the petitioner, on a Court query has submitted that the petitioner's complaint was in fact dismissed by the trial Court and no such summoning order was passed and the revision filed by

the petitioner is pending before the Addl.Sessions Judge, Panipat.

Learned counsel for the petitioner has relied upon **2008(4) RCR (Criminal) 418, Kulwinder Singh vs. State of Punjab and another**, to argue that where a complaint has been given before the Senior Superintendent of Police and on an inquiry, the complaint was found to be false, the Kalandra under Section 182 Cr.P.C. cannot be presented by the SHO and the proceedings were quashed.

Learned counsel for the petitioner has also relied upon **2007(2) RCR (Criminal) 199, D.S.Rawat vs. State of Punjab**, wherein this Court has held that as per the provisions of Section 195 Cr.P.C., the complaint under Section 182 IPC can be initiated against the informant only by the officer to whom the false information has been made and not by an authority which is administratively subordinate to such officer. It is held that since the application was given to the Superintendent of Police and the Kalandra was filed by Station House Officer, in the absence of any authorisation by the Superintendent of Police to file the said Kalandra, the same is liable to be quashed. The Court also relied upon an earlier judgment of this Court in **Jarnail Singh vs. The State of Punjab and another, 1983(1) Recent Criminal Reports 540(P & H)**.

In reply, learned State counsel on the basis of the affidavit of inquiry officer has submitted that the allegations levelled by the petitioner in the inquiry were found to be false, and, therefore, SHO Police Station (City) Panipat has registered Kalandra under Section 182 IPC as the Superintendent of Police, District Panipat has sent the inquiry report to the SHO for necessary action.

Learned counsel for the complainant has submitted that the petitioner has given a false complaint and respondent No.2 was unnecessarily harassed and he has been summoned before the Additional Sessions Judge, Panipat, in a revision filed by the petitioner.

On the persuasion of the Court, counsel for the petitioner as well as counsel for respondent No.2-complainant have agreed to a mutual settlement that the petitioner is ready to withdraw the revision filed by him, which is now pending before the Addl.Sessions Judge, Panipat in order to end litigation between the parties and live in peace and harmony.

After hearing learned counsel for the parties, I find merit in the present petition.

It is the admitted case of the parties that the petitioner has given a complaint to the Senior Superintendent of Police, Panipat, who had marked the inquiry to the Deputy Superintendent of Police and after the complaint filed by the petitioner was found to be without any basis, the SHO has submitted the Kalandra under Section 182 IPC.

In view of the aforesaid judgments in the case of *Kulwinder Singh (supra)* and *D.S.Rawat (supra)*, the SHO, who is a subordinate official to Senior Superintendent of Police, was not competent to submit the kalandra. In view of the same, the impugned kalandra dated 20.09.2013 (Annexure P2) and the subsequent proceedings thereto are quashed.

As undertaken by learned counsel for the petitioner, the petitioner will withdraw his revision pending before the Court of Additional Sessions Judge, Panipat, in order to bring peace and harmony between the

parties.

The petition stands disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

27.08.2018
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Whether speaking/reasoned	Yes/No.
Whether reportable-	Yes/No