

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

CRM-M-39168-2014 (O&M)
Date of decision: 14.11.2018

Kulwant Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Narinder S. Dadwal, Advocate, for the petitioner.

Mr. K.S.Aulakh, DAG, Punjab
for respondent Nos.1 & 2 -State.

Mr. Dushyant Sarvesh, Advocate for
Mr. K.S.Sidhu, Senior Advocate
for respondent No.3.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition seeking quashing of the order dated 14.10.2014 (Annexure P-10) passed by the Learned Judicial Magistrate 1st Class, Jagraon, whereby the application for discharge of the petitioner in a complaint filed under Section 182 of the Indian Penal Code (for short 'Act') was dismissed, despite the fact that the complaint filed before the Magistrate was time barred and the cognizance of the same could not have been taken by the trial Court.

The brief facts in the present case are that the husband of the petitioner died on 16.01.2003. Sensing foul play in the death of the husband of the petitioner, she expressed her suspicion that her husband might have been murdered. Therefore, an intimation was sent to the police. It was stated by the petitioner in the complaint that the petitioner was residing at a different place and the husband of the petitioner was cremated even without

intimating the petitioner and the last rites of her husband were also performed in the absence of the petitioner. The police did not register the FIR in the case. However, the police did not register the case saying that they have conducted an inquiry and found that the complaint was not correct. However, feeling aggrieved of the inaction of the police, the petitioner filed CRM-M-35104-2003 on 06.08.2003 with a prayer that the Senior Superintendent of Police, Jagraon be directed to take action against the accused; named in the initial complaint. This Court issued a direction to the Senior Superintendent of Police, Jagraon to look into the representation made by the petitioner. Acting upon the order passed by this Court and finding some substance in the complaint, FIR No. 184 dated 19.08.2003 under Sections 302, 201, 420, 34 of IPC; was registered by the police.

However, the police claimed to have investigated the matter and prepared the cancellation report on 04.01.2004. But the same was not presented before the Magistrate. As it transpires, thereafter, the petitioner also submitted an affidavit dated 07.06.2004; to the police; to the effect that the FIR was got registered due to some suspicion. It is only thereafter that the cancellation report was presented by the police before the Magistrate; on 03.03.2005. However, despite the petitioner having, allegedly, submitted the affidavit to the effect that she does not have any objection to the cancellation report, the Magistrate issued a notice to the petitioner before accepting the cancellation of the report. But, since the petitioner had already submitted the affidavit in this regard, therefore, she chose not to put in appearance before the Magistrate. So on appreciation of the evidence on the file, the Magistrate ordered to re-investigate the case, vide order dated

20.05.2006.

The police again investigated the case and prepared cancellation report on 16.06.2006. At this stage, on being given notice, the petitioner appeared before the Magistrate and again reiterated, vide a statement dated 13.07.2006; that she agrees with the cancellation report and she has no objection if the report is accepted. Accordingly, the cancellation report in the above said FIR was accepted by the Magistrate on 03.11.2007.

Having got scot free from the complaint in the FIR, one of the accused, namely, Manjit Inderpal Singh moved an application to the police for taking action against the present petitioner under Section 182 of IPC. It is upon this complaint, that in complaint under Section 182 IPC, the proceedings before the Magistrate has been initiated by the police.

Learned counsel for the petitioner has submitted that in the present case, the petitioner had never made any complaint knowing the same to be false. The petitioner had only expressed her suspicion regarding the involvement of the accused qua the death of her husband. Therefore, no information, constituting the offence under Section 182 IPC, was ever given by the petitioner to the police. Still further, it is contended that, otherwise also, the police had never acted upon the information given by the present petitioner. Instead; the petitioner had availed her legal remedy and approached the High Court for taking action on the complaint made by the petitioner. It is only while appreciating the complaint made by the petitioner, as per the order of this Court, that the police had registered a case on the complaint of the petitioner. Still further, it is contended that during the pendency of the investigation, the accused including Manjit Inderpal Singh entered into a compromise, explaining that they were not involved in

the incident. Therefore, the petitioner had re-conciled with her fate and chose not to contest the matter any further. Accordingly, after the investigation of the case, when the police approached the petitioner by preparing a cancellation report, she had given an affidavit to the police that she had made this complaint on the basis of some suspicion and since the police had investigated the matter, therefore, she did not want to pursue with the case any more. Hence, it is argued by the counsel for the petitioner, that from this stage onward, the petitioner is not responsible for any action taken by the police pursuant to any order of the Court. The petitioner had first submitted an affidavit before the Magistrate; while considering the first cancellation report prepared by the police on 04.01.2004. Thereafter, the petitioner had stopped being any complaint against any accused.

It is further submitted that the subsequent investigation had been ordered by the Court; on appreciation of the investigation proceedings; conducted by the police. This shows that even the Court of Magistrate was not fully agreeing with the initial investigation report prepared by the police. Accordingly, the police was directed by the Court to re-investigate the matter. Again, the police had filed the cancellation report; and on being put to notice, the petitioner had; again; made a statement that she does not want to pursue the case. Hence, it is submitted by the counsel for the petitioner that the petitioner is not all responsible for any alleged harassment caused to the accused, including Manjit Inderpal Singh.

The other argument of the counsel for the petitioner is that since; initially; cancellation report had been prepared by the police on 04.01.2004 and even the petitioner had given an affidavit on 06.06.2004, therefore, even if the complaint made by the petitioner was treated to be

false, then also the police had become aware of the facts of the case and the complaint should have been filed by the police within a period of limitation; as prescribed by Section 468 of Cr.P.C. Since the punishment for the offence under Section 182 IPC is six months only, therefore, the limitation prescribed for filing complaint; as per Section 468 Cr.P.C.; would be one year. However, in the present case, the complaint under Section 182 IPC has filed by the police only on 13.03.2008 and the summoning order has been issued only on 29.10.2010. Therefore, the complaint itself is barred by time. Since under Section 468 Cr.P.C. even taking cognizance by the Court is prohibited; if the complaint is not filed within the prescribed time, therefore, the subsequent proceedings stand vitiated. Hence, the summoning of the petitioner and the subsequent order of refusal to discharge the petitioner also stands vitiated. The petitioner has relied upon the judgment of this Court rendered in 2009(2) R.C.R. (Criminal) 1; Gammi @ Gama Vs. State of Punjab and another. Relying upon this judgment, counsel for the petitioner has submitted that a limitation under Section 469 Cr.P.C. to file complaint under Section 182 IPC would start running from the date when the offence and the offenders became known to the public servant. For the same purpose, counsel for the petitioner has also relied upon the judgment of this Court rendered in CRM-M-27175 of 2012 decided on 22.01.2013, Manvinder Kaur and others Vs. State of Punjab and another. Counsel has further submitted that although Section 473 Cr.P.C. gives the power to the trial Court to entertain a complaint after the prescribed period of limitation, provided the sufficient cause is shown by the complainant for not presenting the complaint within time, however, in the present case, there is not even iota of the explanation given by the police as to why, the

complaint under Section 182 IPC was not presented before the Magistrate, within the prescribed time of limitation.

On the other hand, learned counsel for respondent No.3-Manjit Inderpal Singh submitted that since the petitioner has been charge-sheeted, therefore, she cannot be discharged at this stage. However, he has not even raised any argument qua the claim of the petitioner regarding limitation applicable in the case.

Learned State counsel, being instructed by ASI Darshan Singh submits that the limitation in the case would start from the date of the acceptance of the cancellation report by the Magistrate. Since the cancellation report was finally accepted only on 03.11.2007, therefore, the complaint, thereafter, has been filed well within the period of six months, on 13.03.2008. Hence, the complaint is not time barred. However, the other facts mentioned by the counsel for the petitioner; on factual matrix; have not been disputed by the learned State counsel.

To counter the argument of learned counsel for the private complainant-Manjit Inderpal Singh, the counsel for the petitioner has argued that the objection qua limitation can be raised at any point of time; because it goes to the competence of the trial Court to take the cognizance itself. Since the taking of cognizance itself would be vitiated on the ground of limitation, therefore, all proceedings subsequent thereto; would not have any legal sanction behind them.

Having heard learned counsel for the parties, this Court finds substance in the arguments raised by learned counsel for the petitioner.

First of all, there is nothing on record; even to justify the complaint made against the petitioner under Section 182 IPC. The provision

of under Section 182 IPC is reproduced herein below:-

“182. False information, with intent to cause public servant to use his lawful power to the injury of another person.-Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

A bare perusal of Section 182 IPC shows that the complaint under Section 182 IPC by a public servant would be maintainable only if the informant had given any information to the public servant; which he knows or believes it to be false; intending thereby; that the public servant would start using his official capacity. In the present case, the complaint filed by the police under Section 182 of IPC; does not even mention that the petitioner had given any information which she knew or believed to be false. The only ground given in the complaint by the police official is that the private respondent-Manjit Inderpal Singh had been mentally harassed and the precious time of the Court and the police had been wasted. This Court finds that these averments are not even remotely falling under scope of Section 182 of IPC. The police and the Courts are under legal duty to redress the grievance of citizen. So initiation of proceedings before them, per se, cannot be termed as wastage of time of police or the Court. Hence

the complaint itself is without any basis.

Otherwise also, the documents placed on the file show that when the first cancellation report was filed, then the petitioner had submitted an affidavit to the police itself; on 07.06.2004; before filing of the cancellation report, saying that she does not want to press with the complaint any more. However, despite that, it is the Court of Magistrate who had found the investigation conducted by the police to be shoddy, therefore, had ordered further investigation into the matter. In view of this appreciation by the Court of Magistrate qua the complaint of the petitioner, it cannot be said with any certainty that the information given by the petitioner was definitely incorrect or believed to be incorrect by the petitioner. It cannot be said that the petitioner was wrong in initially expressing her suspicion qua the death of her husband. However, when the police again filed a cancellation report, the petitioner had again appeared before the Magistrate to make a statement that she does not wish to press any complaint against anybody in this regard. This shows that there was no ill-will with the petitioner and initial complaint was based on non-malafide suspicion of the petitioner.

Hence, any allegation against the petitioner for harassing the private respondent-Manjit Inderpal Singh or for that matter, any other accused is not sustainable. It is quite natural that when the husband of the petitioner had expired and there were some property disputes and the disputes regarding allegations of illicit relations with the deceased, that the petitioner would have expressed her suspicion regarding foul play in the death of her husband. Moreover, the FIR in the matter was registered only on the intervention of the Court. For this reason also, this cannot be said

that the petitioner knowingly gave any wrong information to the police. At the best; this can be said that suspicion expressed by the petitioner have not been found to be substantiated, on investigation by the police; or due to some compromise entered into between the parties, as is submitted by counsel for the petitioner and as is suggested by the facts on record and the attending circumstances.

Even otherwise, it is a matter of fact that the first cancellation report was prepared by the police on 04.01.2004. Even the petitioner had sworn of an affidavit, duly submitted to the police on 07.06.2004. Therefore, the offender as well as the offence, if any, were very well known to the police on this date itself. This Court finds the reliance of the counsel for the petitioner on the judgment of this Court rendered in *Gammi @ Gama's case (supra)* and *Manvinder Kaur and others (supra)* to be well placed. This Court is also of the considered opinion that once the alleged offence as well as the offender are known to the complainant public servant then the limitation for filing complaint under Section 182 IPC would start running from the date this knowledge of the public servant becomes complete. Accordingly, the complainant was required to file the complaint within one year from the date of preparation of the first cancellation report; or at the best; from the date when the petitioner herself had submitted an affidavit for the first time on 07.06.2004, prayer therein, that she does not wish to press any further with her complaint. Seen in this perspective, the complaint filed by the police official is clearly time barred.

This Court does not find any substance in the argument of the learned counsel for the private respondent-Manjit Inderpal Singh that once the charge is framed in the case then the point of limitation cannot be raised

by the accused. This Court has already held in *CRM-M-9579-2017; M/s Zimidara Kheti and another Vs. State of Punjab, decided on 11.10.2018* that if the complaint is not filed within period of limitation then taking cognizance of the offence itself stands vitiated; due to lack of authority of Law with the Magistrate. Therefore, the subsequent proceedings against the accused would be of no legal consequences. Hence, the plea of incompetence of the Court to take cognizance due to expiry of limitation, can be taken at any stage. Hence, the present petition can not be dismissed on the ground that the charge has been framed against the petitioner and that she had not taken the objection qua limitation in the first instance.

Although, the learned counsel for the State has submitted that the limitation for filing the complaint under Section 182 IPC would start from the date when the cancellation report is accepted by the Magistrate, however there does not appear to be any legal warrant for this argument. The fact remains that at the time when the police had prepared the cancellation report, it was sure, at least from its own side, that the information given to them was not correct. The acceptance of the cancellation report, by no means, is an order on veracity of the facts involved in the case. It is not a judgment on merits of the case as such. Despite acceptance of cancellation report by the Magistrate qua the FIR, the complainant can prove his/her case and get the accused convicted in the case by proceeding further as a complaint case. Therefore, the cancellation report, at the best, can be seen as acceptance of correctness of the 'investigation' by the police and not as a certificate that the facts mentioned in the FIR are incorrect. Therefore, it cannot be said that the police would be justified in waiting till acceptance of the cancellation report; for initiating

any proceedings under Section 182 of IPC. The limitation for filing complaint under Section 182 IPC cannot be extended for the reasons beyond the statutory provisions, just because of conduct of the Investigation Officer himself.

In view of the above, this Court finds sufficient merits in the petition filed by the present petitioner. Accordingly, the present petition is allowed. The complaint against the petitioner under Section 182 of IPC filed before the learned Judicial Magistrate, 1st Class, Jagraon, order dated 14.10.2014 and all the proceedings subsequent thereto are hereby quashed.

(RAJBIR SEHRAWAT)
JUDGE

14.11.2018

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Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No