

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 1810 of 2013 (O&M)
Date of decision : November 21, 2018

Murari Lal Saini

....Petitioner

versus

State of Haryana and another

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Ms Loveleen Dhaliwal, Advocate, for the petitioner
Mr. Siddarth Sanwaria, DAG, Haryana for the State
Mr. PS Dhaliwal, Advocate, for the complainant

Fateh Deep Singh, J. (Oral)

On the complaint of one Rajbir respondent no. 2 before this Court, addressed to the Superintendent of Police, Kurukshetra, the matter was looked into and upon advice of the Assistant District Attorney dated 16.6.2011, an FIR bearing No. 315 dated 23.6.2011, under Sections 182, 506 IPC and under Section 3(1)(ix) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, the Act) was got registered.

In his allegations, the complainant stated that one Murari

Lal Saini present petitioner had given false complaints to the police on 9.4.2010 and thereafter on 17.6.2010. It was alleged that these complaints were duly inquired into and found to be false. It is alleged that on 5.4.2011 another complaint was filed which after due inquiry was consigned on 30.4.2011. It is claimed that complainant Rajbir had earlier filed a criminal complaint under Sections 323, 325, 506, 34 IPC against accused Murari Lal which is pending in the court of law and on account of which as a counter-blast Murari Lal was initiating complaints.

The accused-petitioner is aggrieved over impugned orders dated 4.5.2013 passed by the court of learned Additional Sessions Judge, Kurukshetra whereby charges were framed by passing following orders which are reproduced below to lay emphasis:-

**“Present: Sh. Kasturi Lal, Public Prosecutor for the
State assisted by Shri DS Mehla, Advocate
for the complainant
Accused Murari Lal on bail with Shri Jagtar
Singh, Advocate,**

**Heard. A prima facie case for the commission of
offence punishable under Sections 182, 506 IPC and
under Section 3(1)(ix) of the Scheduled Castes
and Scheduled Tribes (Prevention of Atrocities) Act,**

1989 is made out against the accused and he is charged accordingly to which he pleaded not guilty and claimed trial.”

The present petition by way of revision has been sought to be filed by Murari Lal accused challenging and impugning the framing of these charges.

Heard Ms Loveleen Dhaliwal, Advocate, for the petitioner; Mr. Siddarth Sanwaria, DAG, Haryana for the State and Mr. PS Dhaliwal, Advocate, for the complainant and perused the records.

It is there in the arguments of the two sides that charges under Sections 182, 506 IPC and under Section 3(1)(ix) of the Act have been framed by the impugned order. Section 195 of the Code of Criminal Procedure (in short, Cr.P.C.) sufficiently lays down that any offence punishable under Sections 172 to 188 of the IPC, no court can take cognizance except on the complaint in writing of public servant concerned or some other public to whom he is administratively subordinate. Reverting back to the instant case the complaint of Rajbir is addressed to the Superintendent of Police, Kurukshetra on which the present FIR bearing No. 315 dated 23.6.2011, under Sections 182, 506 IPC and under Section 3(1)(ix) of the Act has been got registered against Murari Lal at Police Station

Thanesar, District Kurukshetra. The primary ground is making of false complaint by Murari Lal against Rajbir and as is conceded to at the bar by Ms Loveleen Dhaliwal, Advocate, for the petitioner; Mr. Siddarth Sanwaria, DAG, Haryana for the State and Mr. PS Dhaliwal, Advocate, for the complainant, is addressed to the Superintendent of Police, Kurukshetra and subsequently was found false. Therefore, by the statutory provisions enshrined under Section 195 Cr.P.C. it was only the Superintendent of Police or an Officer to whom he is subordinate could have initiated a complaint in writing and to the same effect is the settled preposition of law in **P.D.Lakhani and anr. Vs State of Punjab and Anr., 2008(2) R.C.R. (Criminal) 838; Dr. Sham Lal Thukral vs The State of Punjab, CRM-19680-2006 decided on 28.7.2008 and Rajwinder Kaur vs State of Punjab and another, CRM-M-25188-2011 decided on 14.2.2013** cited by learned counsel for the revisionist, the present FIR could not come about in the light of the offence being under Section 182 IPC for which only a complaint lies and that too by an officer to whom it is addressed or his superior and thus, in such a situation an FIR having been filed by SHO who is much lower in rank in hierarchy of the police was not competent to file an FIR for offence under Section 182 IPC and therefore, to the mind of this Court is clearly nothing but

misuse of the process of the Court which is not permissible. Though provisions of Section 482 Cr.P.C. which deals with the inherent powers of this Court are wide enough but at the same time are to be sparingly and carefully exercised with due care and caution and it is fully justified for its exercise to meet the ends of justice and advancement of the same. This Court seeking support from judgment of Hon'ble Apex Court in **Saloni Arora vs State of NCT of Delhi, Criminal Appeal No. 64 of 2017 decided on 10.1.2017** where reliance was placed on **Daulat Ram vs State of Punjab, AIR 1962 SC 1206** holding that there is absolute bar against the court taking seisin of the allegations under Section 182 IPC except the manner provided by Section 195 Cr.P.C. The learned counsel for the respondents could not convince this Court how the impugned order of framing of charge under Section 182 IPC against the petitioner could be resorted to in the light of such a specific bar under the Statute. Thus framing of charge under section 182 IPC certainly is an illegality and perversity which necessitates setting aside of the framing of charge under that provisions of law.

The other heads of charge under which present petitioner Murari Lal has been charge sheeted is under Section 506 IPC and Section 3(1)(ix) of the Act. Counsel for the petitioner could not in any

manner prevail upon this Court how framing of charges under these heads does not satisfy the requirements of law. In the light of what has been detailed and discussed above, the impugned order dated 4.5.2018 is hereby set aside qua framing of charges under section 182 IPC and revision petition to that extent is hereby allowed and qua framing of charges under Section 506 IPC and Section 3(1)(ix) of the Act does not calls for any interference. In what has been detailed and discussed above, the impugned order thus is partly modified. In the light of these observations, the revision petition is disposed of accordingly.

Parties through their counsel are directed to appear before the court below which shall proceed ahead into the matter as per law.

November 21, 2018
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No