

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-13675 of 2019

.....

Date of decision:04.12.2019

Gurdit Singh

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Ashok Kumar Verma

.....

Present: Mr. Anantdeep Singh Sandhu, Advocate for the petitioner.

Mr. Jagmohan Singh Ghumman, Deputy Advocate General,
Punjab for the respondent-State.

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Ashok Kumar Verma, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of the Calendra bearing No.1406-5A, dated 17.8.2017 (Annexure-P.2) registered at the behest of Station House Officer, Kot Isse Khan, District Moga under Section 182 IPC along with all subsequent proceedings arising therefrom, being illegal, unlawful, without any merits and against the provisions of law.

The brief facts of the case are that Paramjit Singh alias Pamma son of the petitioner had gone to Manila about 15 years ago and he was doing business over there and was having good income. About 10 years ago Dulla Singh (respondent No.4) raised 'Lalkara' in the village and said that he has got Paramjit Singh alias Pamma killed by giving bribe to some persons.

The petitioner was having a civil dispute regarding some land/house with respondent No.4 fearing danger to his family, the petitioner moved application dated 13.10.2014 against respondent No.4 and other persons to Senior Superintendent of Police, Moga (respondent No.2). The said application was inquired into by ASI Jaswinder Singh 111/Moga P.S. Kot Isse Khan but as no truth was found and the same was ordered to be filed. Respondent No.4 again threatened the petitioner that he has got his son Paramjit Singh killed in Manila and now he will also do the same to his younger son and will take possession of his land. The petitioner again moved an application dated 6.8.2015 to DIG, Ferozepur Range, Ferozepur. The said application was inquired into by ASI Baljit Singh and the same was also filed.

Feeling aggrieved with the complaint filed by the petitioner, respondent No.4 filed a complaint to respondent No.2 against the petitioner (Annexure-P.1). Respondent No.2 marked the complaint for inquiry to DSP-Dharamkot, who again sought the report of respondent No.3-SHO, Police Station Kot Isse Khan, District Moga. He deputed ASI Kuldeep Singh for conducting inquiry. During inquiry the statement of respondent No.4 was recorded and ultimately Calendra under Section 182 IPC was filed in the Court against the petitioner under the signatures of SHO, P.S. Kot Isse Khan, District Moga (respondent No.3), for making false complaint against respondent No.4. The sole point which has been raised in the petition is that Inspector Jasbir Singh, who was the Station House Officer, Kot Isse Khan, District Moga, has filed a Calendra and in view of the provisions of Section

182 of IPC, is not the competent authority to file the same. Section 182 of the IPC is reproduced hereunder:-

"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".

It is clear that the complaint i.e. Calendra can be initiated by the public servant/officer to whom such false information is given with intent to use his lawful power to cause injury to the other person. In this case, the complaint was submitted to the Senior Superintendent of Police, who marked the complaint for inquiry to DSP-Dharamkot, who again sought the report of respondent No.3-SHO, Police Station Kot Isse Khan, District Moga. He deputed ASI Kuldeep Singh for conducting inquiry. During inquiry the statement of respondent No.4 was recorded and ultimately

Calendra under Section 182 IPC was filed in the Court against the petitioner under the signatures of SHO, P.S. Kot Isse Khan, Distt. Moga (respondent No.3), for making false complaint against respondent No.4.

Learned counsel for the petitioner argued that the Calendra presented in the Court under the signatures of the SHO is totally incompetent for the reason that in terms of the provisions of Section 195(1) (iii) of the Code of Criminal Procedure (for short - "Cr.P.C."), the same could be presented only by the public servant to whom the complaint was made or any other Public Servant to whom he is administratively subordinate. He has made reliance upon the judgment of this Court in Surjit Singh v. State of Punjab, Cr. Misc. No.60096-M of 2004 (decided on 06.02.2008).

On the other hand, learned State counsel argued that the Calendra though was presented under the signatures of SHO, but as it is evident thereon, it was on the direction by the Senior Superintendent of Police whereby he ordered for taking action against the petitioner under Section 182 IPC.

In such a condition, even if the principle of law is stretched to say that the Senior Superintendent of Police not being the competent authority could not have himself examined the issue so as to ultimately lodge a Calendra against the petitioner in the event all the allegations being found to be incorrect, then also the complaint was marked to the Deputy Superintendent of Police to look into the matter and thus, the SHO presenting the Calendra was incompetent to do so in view of the provisions

laid down under Section 82 of the Cr.P.C. and in view of the fact that the complaint was never made to him in the original capacity.

This Court in Dr. Sham Lal Thukral Vs. State of Punjab, 2009 (3) RCR (Criminal) 168 in similar circumstances quashed the Calendra where the report had been submitted to the Senior Superintendent of Police and the Calendra had been filed by the SHO. Similarly, in P.D. Lakhani and another Vs. State of Punjab and others, 2008 (2) RCR (Criminal) 838, it was observed as under:-

"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

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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."

This Court in Surjit Singh v. State of Punjab (supra), has observed as under:-

"Hon'ble Supreme Court in Daulat Ram's case (supra) has 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 S.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

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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 S.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 S.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 Ss.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

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and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of S.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 S.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.

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The learned counsel for the State Government tries to support the action by submitting that S.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 S.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.”

“Once the position of law on the issue whether calendra under Section 182 IPC can be presented under the signatures of any authority who though subordinate to the person to whom the complaint was made but on the direction of the authority concerned is already settled and it has been opined that in case the prosecution is to be launched under Section 182 IPC, the complaint in writing should be made by the public servant

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concerned and not his subordinate and mere direction by the competent authority to present calendra will not comply with the provisions of law. In the present case, the complaint has been filed by the petitioner to the Senior Superintendent of Police but calendra has been presented by the Assistant Sub Inspector, which cannot be held to be valid in terms of provisions of Section 195(1)(iii) of the Code of Criminal Procedure.”

I have gone through the law laid down in the above mentioned judgments which is squarely applicable to the facts of the present case. Accordingly, Calendra dated 02.08.2017 (Annexure-P.2) and all subsequent proceedings arising thereto are quashed.

The petition stands disposed of accordingly.

December 04, 2019.

(Ashok Kumar Verma)
Judge

hsp

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