

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

**CRM No.M-29898 of 2017 (O&M)
Date of Decision: February 15, 2019**

Gurmit Singh Sodhi

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.J.S.Bedi, Senior Advocate with
Mr.K.S.Sidhu, Advocate
for the petitioner.

Mr.Dhruv Dayal, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for quashing of Kalandra under Section 182 IPC, Police Station Lakho Ke Behram, bearing Rapat No.11 dated 21.05.2013 and order dated 17.05.2016 passed by learned Judicial Magistrate Ist Class, Guruharsahai, summoning the petitioner along with all subsequent proceedings arising out of above-said Kalandra.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that occurrence took place on

07.05.2013 and application was filed by the petitioner to SSP, Ferozepur. Then SIT was formed and the application was found to be false, on the basis of which Kalandra under Section 182 IPC was presented against the present petitioner in the Court on 21.05.2013. The copy of the application is Annexure P-1. Annexure P-2 is the copy of Kalandra. Petitioner filed the criminal complaint before Sub Divisional Judicial Magistrate, Guruharsahai, copy of which is Annexure P-3, on the basis of which, as argued, order has been passed by learned JMIC, Guruharsahai, summoning the accused.

Learned counsel for the petitioner relied upon the judgment passed by this Court in ***Tarlochan Singh v. State of Punjab, 2007 (3) R.C.R. (Cr.) 791***, in which it is held as under:-

*“6. In **Banta Singh v. State of Haryana, 1995 (3) RCR (Criminal) 133**, the first information report lodged by the petitioner was found to be false during investigation and he was prosecuted for an offence under Section 182 IPC. The petitioner filed a complaint on the same facts and allegations on which he had made a statement before the police. The learned Magistrate had summoned the accused for various offences. It was held that the prosecution of the petitioner under Section 182 IPC during the pendency of the complaint was evidently an abuse of the process of the Court and the proceedings were quashed.*

*7. In **State of Punjab v. Brij Lal Palta, AIR 1969 SC 355**, it was held that once a complaint filed by the informant, which is based on the same facts and allegations on which the first information report was registered, is being proceeded with, it was not open to a Magistrate to take cognizance of any offence alleged to have been committed under Section 211 IPC unless there has been proper compliance with the provisions of Section 195(1)(b) Code of Criminal Procedure. It was further held that though the offence under Section 182 IPC was distinct from the one under Section 211 IPC, the latter was more serious and may include the offence under the former Section. The Magistrate could take cognizance of an offence under Section 195(1)(a) Cr.P.C., but it would virtually lead to the circumvention of the provisions of Section 195(1)(b) Code of Criminal Procedure if proceedings under Section 182 IPC could continue, where the offence disclosed was covered by Section 211 IPC and a complaint was pending which had been filed by the informant on the same facts and allegations as*

were contained in his First Information Report. Similarly, on a parity of reasoning with regard to the offence under Section 211 IPC, no cognizance could be taken by the Magistrate for the alleged offence under Section 193 IPC, which was one of the Sections mentioned in Section 195(1)(b) Code of Criminal Procedure.

8. It is, thus, clear that if the case under Section 182 IPC is allowed to proceed, a decision in the said case would tantamount to pre-judging the complaint filed by the petitioner. The prosecution of the petitioner under Section 182 IPC during the pendency of his complaint on the same facts and allegations as mentioned in the FIR, would be an abuse of the process of the Court.”

Learned counsel for the petitioner has also relied upon the judgment passed by this Court in ***Bhushan Kumar alias Bhupender and another vs. State of Haryana, 2015(2) RCR (Criminal) 193.***

In view of the above law laid down by this Court in the above-cited judgments, proceedings in the Kalandra against the petitioner cannot proceed.

Therefore, finding merit in the present petition, the same is allowed. Kalandra under Section 182 IPC, bearing Rapat No.11 dated 21.05.2013 and order dated 17.05.2016 passed by learned JMIC, Guruharsahai, along with all subsequent proceedings arising therefrom, are hereby quashed.

February 15, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No