

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr.No.253

CRM-M-35111 of 2016(O & M)
Date of Decision:16.01.2019

Rajat Miglani and others

....petitioners

Versus

State of Punjab and others

.....respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Sunil Chadha, Senior Advocate with
Mr.M.S.Atwal, Advocate
for the petitioners

Mr.Sidakmeet Sandhu, AAG Punjab

ARVIND SINGH SANGWAN, J. (ORAL):

Prayer in this petition is for quashing of the order dated 24.07.2015 (Annexure P2) passed by the AIG Complaint Branch, Punjab, Chandigarh, as well as the Kalandra dated 21.03.2016 (Annexure P3), vide which the proceedings under Section 182 of the Indian Penal Code, 1860 (for short "IPC"), have been initiated against the petitioner, vide rapat No.23, dated 20.08.2016 (Annexure P4).

Brief facts of the case are that on the basis of the complaint filed by petitioner No.1, an inquiry was conducted by SP Phagwara and as per the inquiry report dated 06.05.2013, conducted by SP (Headquarter) Kapurthala, it was found that no such incident had taken place and therefore, vide impugned order (Annexure P2) issued by the AIG Complaint Branch, Punjab, it was directed to initiate the proceedings against the petitioners under Section 182 IPC and by way of Kalandra rapat No.23

dated 20.08.2016 proceedings under Section 182 IPC were initiated against the petitioners.

Learned Senior counsel for the petitioners submits that the petitioners are on bail and in fact after the inquiry was conducted by the aforesaid officials, petitioner No.2- Suraj Parkash Miglani had filed a Criminal Complaint No.54 on 08.12.2014 and after the preliminary evidence was led by the petitioners, the Judicial Magistrate First Class, Phagwara, vide order dated 25.05.2018 summoned Vijay Kumar, Ajit Kumar @ Babbu and Ram Lal (against whom the petitioners have given the original complaint to the police authorities) for offence punishable under Section 384 read with Section 120-B IPC.

Learned Senior counsel for the petitioners submits that the said complaint is pending before the trial Court.

Learned Senior counsel for the petitioners has relied upon the judgment of this Court in ***Shiv Kumar Grover and another vs. State of Punjab, 2013(1) RCR (Criminal) 57***, to submit that it is well settled principle of law that where the police after investigation has found that the allegations made in the complaint are false and has submitted the Kalandra under Section 182 Cr.P.C against the said complainant and thereafter the complainant has filed a complaint before the Magistrate and if the Magistrate is seized of the subject matter of the original complaint/FIR, then the proceedings under Section 182 Cr.P.C are not only illegal but without jurisdiction and therefore Kalandra under Section 182 IPC and subsequent proceedings are liable to be quashed.

Similar view has been taken by this Court in ***Kehar Singh vs. State of Punjab 2012(1) RCR (Criminal) 458*** and ***Ramesh Chand vs. State***

of Haryana, 2006(4) RCR (Criminal) 718.

Reply by way of affidavit of Assistant Superintendent of Police, Phagwara, on behalf of respondents No.1 to 5 has been filed.

In the reply, it is stated that the initiation of proceedings under Section 182 IPC is based on the inquiry conducted by the police in which the substance of the complaint filed by the petitioners against respondent No.6 Vijay Kumar and one Ajit Kumar was found to be false.

Despite service no one has appeared on behalf of respondent No.6.

After hearing learned counsel for the parties and considering the averments made by learned Senior Counsel for the petitioners, I find merit in the present petition for the following reasons:

(a) The very basis of filing a Kalandra under Section 182 IPC is that the petitioner had given a complaint against Vijay Kumar, Ajit Kumar @ Babbu and Ram Lal, regarding the incident in which the petitioners were victim of extortion of Rs.10 lakhs. Admittedly, the petitioners have filed a criminal complaint in which vide order dated 25.05.2018 (Annexure P8), the Illaqa Magistrate has issued summing order against respondent No.6 and two other persons to face trial under Section 382 read with Section 120-B IPC.

(b) The police has submitted the Kalandra only on the premise that in the inquiry conducted on the complaint given by the petitioners, no substance was found and the petitioners could not prove that they were cheated and defrauded by aforesaid Vijay Kumar and Ajit Kumar @ Babbu to the tune

of Rs.10 lakhs. However, in the complaint, the trial Court finding a prima facie case based on the evidence led by the petitioners has formed an opinion that Vijay Kumar, Ajit Kumar @ Babbu and Ram Lal are liable to be charged and face trial.

Therefore, in view of the judgments of this Court in the case of *Shiv Kumar Grover, Kehar Singh and Ramesh Chand (supra)*, the summoning of the petitioners under Section 182 IPC is nothing but a misuse of process of law.

For the reasons stated above, the present petition is allowed. The impugned order 24.07.2015 (Annexure P2) as well as the Kalandra dated 21.03.2016 (Annexure P3) are hereby quashed.

(ARVIND SINGH SANGWAN)
JUDGE

16.01.2019

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No