

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

124

CRM-M-54218-2019

Date of decision : 18.12.2019

Amir Chand

... Petitioner

Versus

State of Punjab and another

.. Respondents

CORAM : HON'BLE MR.JUSTICE RAJBIR SEHRAWAT

Present : Mr.S.S.Kainth, Advocate
for the petitioner.

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of the impugned order dated 28.02.2019 (Annexure P-5) passed by the learned Additional Sessions Judge, Gurdaspur in case CRR No.55 dated 05.11.2018.

The facts giving rise to the present petition are that respondent No.2 herein had moved a complaint dated 04.05.2017 to the Senior Superintendent of Police, Gurdaspur; alleging therein that he was assaulted by one Lekh Raj and others. Although no FIR was registered on the same, however, the police claimed that some inquiry was conducted by the police; and the complaint filed by the respondent was found to be false. Accordingly, the proceedings against the respondent, were initiated before the Magistrate, by filing a complaint under Section 182 of Indian Penal Code (hereinafter referred to 'IPC'), by SHO, Police Station Behrampur. The Court of Magistrate proceeded further with the complaint and issued summons to the respondent. Aggrieved against that

complaint and the summoning order, the respondent had filed a revision petition before the court of Additional and Sessions Judge, Gurdaspur. The Additional and Sessions Judge, Gurdaspur vide its order dated 28.02.2019 accepted the revision and set aside the order passed by the Magistrate; and the complaint filed by the police was dismissed. It is against this revisional order, that the present petition has been filed, by the alleged accused in the complaint which was filed by the respondent. It deserves to be mentioned here that SHO who had filed complaint under Section 182 IPC before the Magistrate; is not the petitioner before this court and the police have not challenged the order passed by the Additional and Sessions Judge, Gurdaspur.

While arguing the case, learned counsel for the petitioner has submitted that the allegations levelled against the present petitioner were found false by the police. Hence, the respondent deserves to be punished in accordance with law; for moving the police authority with false complaint. The Magistrate had rightly summoned the respondent. The well reasoned order passed by the Magistrate has wrongly been set aside by the revisional court.

Having heard learned counsel for the petitioner and having perused the file, this Court finds that the court below has recorded that the alleged complaint was filed by the respondent with the Senior Superintendent of Police Gurdaspur, therefore, as per Section 195 proviso (1)(a) of Criminal Procedure Code, the Court of magistrate could not have taken cognizance of the offence under Section 182 IPC, except upon complaint in writing by the public servant concerned or by some superior

officer. However, the complaint under Section 182 IPC has not been filed by Senior Superintendent of Police; to whom the alleged false complaint was made. The complaint under Section 182 IPC before the Court has been filed only by SHO of the Police Station Behrampur, who was not the authority to whom the Superintendent of Police was subordinate. However, the Magistrate had taken cognizance of the complaint, despite not having been filed by competent authority.

Still further, the court below has recorded that the police had not even registered any FIR on the complaint made by the respondent. Feeling aggrieved against the inaction of the police, respondent had even moved a criminal complaint before the court. After recording evidence, court of the same magistrate has even issued summoning order against the present petitioner. Hence, there was no basis left with the magistrate to proceed on the complaint under Section 182 IPC filed by police against the complainant/respondent No.2.

This Court has heard the counsel and perused the file. Needless to say that, it is not even disputed that even no FIR was registered in this case by the police on the complaint made by the respondent. Hence, the police had not even moved on the complaint made by the respondent; in a legal way. On the contrary, the police had embarked upon an extra statutory exercise by conducting some alleged inquiry into the complaint. There is no such provisions under Cr.P.C. of conducting such kind of inquiry on the complaint moved by the respondent No.2. Hence, the police are not even right in alleging that the police officer had been made to exercise his authority by the complainant.

Rather, the police had failed to act on the grievance of the respondent herein, who had moved the complaint before them. Hence, there is no basis for lodging any complaint under Section 182 IPC by the concerned police. The police could not have taken advantage of their own wrong, by first not proceeding on the complaint moved by the respondent in accordance with law and then, by creating some inquiry report; to initiate a complaint against the respondent under Section 182 IPC.

Even otherwise, when the police had failed to take any action on the complaint moved by the respondent No.2, the respondent filed a private criminal complaint against the present petitioner. After recording of the evidence, the petitioner herein has been summoned as an accused in the complaint filed by the respondent No.2. Therefore, the alleged complaint under Section 182 IPC was denuded of any basis for that. This Court is also in agreement with the order passed by the court below; wherein it has been recorded that the complaint under Section 182 IPC was not filed by the competent person.

In view of the above, this Court does not find any illegality, impropriety and perversity in the order of the court below. Hence, the present petition is dismissed.

18.12.2019
sd

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned
Whether Reportable

: Yes/No
: Yes/No