

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

208

CRM-M-50176-2018

Date of decision : 06.02.2020

Shikha Kondal

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI.

Present : Mr. Jasraj Singh, Advocate
for the petitioner.

Mr. Sandeep Singh Deol, D.A.G. Punjab
for respondent-State.

ARUN KUMAR TYAGI, J. (ORAL)

The petitioner has filed the present petition under Section 482 read with Section 483 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of Complaint titled as State Vs. Shikha Kondal (Annexure P-3) under Section 182 of the Indian Penal Code, 1860 (for short 'the IPC') and summoning order dated 16.08.2018 (Annexure P-4) passed by the Judicial Magistrate Ist Class, Mukerian.

2. Briefly stated the facts giving rise to filing of the petition are that petitioner lodged FIR No.01 dated 02.01.2013 in Police Station Hajipur, District Hoshiarpur under Sections 323, 354 and 506 of the IPC against Sukhdev Singh @ Sukha on the allegations that she is studying in M.SC. at D.A.V. College Chandigarh and had come to her house for vacations. Her father runs a kiriyana shop in the village. On 02.01.2013 at about 5.30 PM when she was present at the shop accused Sukhdev Singh @ Sukha came to the shop and started hurling filthy abuses on her and on being asked not to do so, he got infuriated and by entering into the shop

manhandled her and with an intention to forcibly rape her gave a bite on her left arm and by holding her from collar he scratched with nail below her neck and also slapped on her left cheek and had also torn her clothes. When she raised alarm, many persons gathered there on which he fled from the spot while threatening to kill her brother Raja. The occurrence was witnessed by Chander Kanta. On coming to know about the same her parents reached there and took her to the hospital where she was under treatment. The Police investigated the case and arrested the accused on 03.01.2013. On application of one Onkar Singh, enquiry was conducted by Assistant Superintendent of Police, Tehsil Mukerian who found that complainant Shikha Kondal had stopped the accused while going on the road and slapped him and subsequently by self suffering the scratches and making false allegations of molestation lodged false case against the accused at the behest of her father-Lekh Raj on account of earlier incident where sister of accused Sukhdev Singh had levelled allegations against the father of the petitioner. Assistant Superintendent of Police, Tehsil Mukerian had recommended cancellation of FIR and initiation of proceedings under Section 182 of the IPC against the petitioner. In accordance with the above said recommendation, complaint under Section 182 of the IPC was filed by SHO Police Station Hazipur, District Hoshiarpur against the petitioner.

3. Feeling aggrieved from filing of the complaint and passing of the summoning order dated 16.08.2018 by Judicial Magistrate Ist Class, Mukerian on the same, the petitioner has filed present petition.
4. Notice of the petition was given to the respondent-State by the Co-ordinate Bench vide order dated 15.11.2018.

5. Vide order dated 19.11.2019 this Court directed the respondent-State to file affidavit as to whether any cancellation report had been filed and if so what proceedings took place in respect of the same.

6. In compliance of the above said order, status report by way of affidavit of Sh. Gaurav Garg, IPS, Senior Superintendent of Police, District Hoshiarpur was filed stating that the cancellation report was prepared by the S.H.O., Police Station Haji Pur on 08.03.2013 and was filed before Judicial Magistrate, Mukerian on 27.11.2019.

7. Vide order dated 30.01.2020, the respondent-State was directed to file affidavit regarding status of the cancellation report giving requisite details.

8. In compliance of the above said order, status report by way of affidavit of Sh. Ravinder Singh, PPS, Deputy Superintendent of Police, Sub-Division Mukerian, District Hoshiarpur has been filed mentioning that the cancellation report is pending for 21.03.2020 for appearance of the petitioner.

9. Mr. Jasraj Singh, learned Counsel for the petitioner has argued that complaint under Section 182 of the IPC filed after expiry of the prescribed period of limitation of one year is barred by limitation. Filing of complaint under Section 182 of the IPC before filing of the cancellation report and acceptance thereof is also an abuse of process. Therefore, the same may be quashed. In support of his arguments, learned Counsel for the petitioner has placed reliance on judgments of this Court in ***Harbhajan Singh Bajwa Vs. Senior Superintendent of Police, Distt. Patiala and another : 2000(3) RCR (Criminal) 94; Tarlochan Singh Vs. State of Punjab : 2007 (3) RCR (Criminal) 791; Gammi @ Gama Vs. State of***

Punjab and another : 2009(2) RCR (Criminal) 1; Shiv Kumar Grover and another Vs. State of Punjab : 2013(1) RCR (Criminal) 57 and CRM-M-34231-2015 titled as Sharda Devi Vs. State of Haryana and another, decided on 26.09.2017.

10. On the other hand, Mr. Sandeep Singh Deol, D.A.G. Punjab learned State Counsel for the respondent State has argued that the petitioner had given false information to the Police and thereby committed the offence punishable under Section 182 of the IPC. Complaint could be filed before finalization of the proceedings on cancellation report filed by the Police and the complaint is not barred by limitation. Complaint and the summoning order passed on the same do not involve any abuse of process. Therefore, the petition may be dismissed.

11. Relevant statutory provisions may be referred to first before adverting to the arguments of learned Counsel for the petitioner and learned State Counsel for the respondent-State.

12. Section 182 of the IPC, which prescribes the punishment for giving of false information, with intent to cause public servant to use his lawful power to the injury of another person, reads as under:-

“182. 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.

13. Section 468, 469 and 473 of the Cr.P.C., which are relevant to the question of period of limitation for filing of complaint under Section 182 of the IPC, computation thereof and condonation of delay, read as under:-

468. Bar to taking cognizance after lapse of the period of limitation.—

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

- (a) six months, if the offence is punishable with fine only;*
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation.—

(1) The period of limitation, in relation to an offence, shall commence,—

- (a) on the date of the offence; or*
- (b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the*

knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

473. Extension of period of limitation in certain cases.-

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.”

14. In the present case FIR No. 1 dated 02.01.2013 was registered on statement made by the petitioner on that date. On inquiry Assistant Superintendent of Police, Tehsil Mukerian found the information to be false and recommended cancellation of FIR and initiation of proceedings under Section 182 of the IPC against the complainant. Cancellation report was prepared by SHO, Police Station Hajipur on 08.03.2013. Complaint under Section 182 of the IPC was filed against the petitioner on 16.08.2018. The petitioner filed the present petition on 12.11.2018. The cancellation report was presented before Judicial Magistrate First Class, Mukerian on 27.11.2019 which is now pending for 21.03.2020 for notice to the petitioner.

15. The offence of giving false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 Indian Penal Code with imprisonment for a

term which may extend to six months or with fine which may extend to Rs. 1,000/- or with both. Section 468 of the Cr. P.C. mandates that no Court shall take cognizance of an offence beyond the period of limitation of one year if the offence is punishable with imprisonment for a term not exceeding one year. In ***State of Punjab Vs. Sarwan Singh : 1981 CrL L.J. 722***, the Hon'ble Supreme Court held that the object of the Cr.P.C. in putting a bar of limitation on prosecution was clearly to prevent the parties from filing cases after a long time, as a result of which the material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of offence. In ***Harbhajan Singh Bajwa's Case (Supra)*** this Court observed that the offence under Section 182 of the IPC is complete when the complaint is found to be false. Therefore, it is the date for starting limitation when the investigating agency concludes the investigation and finds the averments in the complaint are false. The acceptance of cancellation report will not extend the time. Under Section 469 of the Cr.P.C. Where the commission of the offence is not known to the person aggrieved by the offence or to any police officer the limitation will start on the first day on which such offence comes to the knowledge of such person or police officer, whichever is earlier. Therefore, when the police officer finds that the complaint was false, it is that date when the limitation starts. Similar view was taken by this Court in ***Jagraj Singh Vs. State of Punjab, 1993(2) RCR (Criminal) 633*** that period of limitation of one year would start from the date when police found the report to be false. In ***Jagraj Singh's Case (Supra); Gammi @ Gama's Case (Supra) and Kulwant Kaur Vs. State of Punjab, (Punjab and Haryana)***

2019 (1)AICLR 893 complaint under Section 182 of the IPC filed after

expiry of the prescribed limitation of one year was held to be barred by limitation and was quashed. In view of the above referred judicial precedents taking of cognizance against the petitioner of offence punishable under Section 182 of the IPC on the basis of complaint filed against the petitioner after expiry of the period of limitation of one year as prescribed under Section 468 of the Cr.P.C. is barred by limitation.

16. Even otherwise, it is now well settled that on presentation of cancellation report, Judicial Magistrate Ist Class may (i) accept the cancellation report and drop the proceedings; or (ii) order further investigation to be made by the police; or (iii) take cognizance on the basis of the material presented/protest petition filed before it and issue process against the accused if he takes the view that there is sufficient ground for proceeding further. Reference in this regard may be made to judgment of the Hon'ble Supreme Court in ***Bhagwat Singh Vs. Commissioner of Police and another : 1985(2) SCC 537***. In the present case in the eventuality of the Judicial Magistrate Ist Class, Mukerian ordering further investigation or taking cognizance, the very basis of the case of the complainant made out in the complaint under Section 182 of the IPC as to the information given by the petitioner to the police being false would stand negated. In ***Shiv Kumar Grover Vs. State of Punjab : 2013(1) RCR (Criminal) 57*** where on investigation the Police found the FIR lodged by the petitioner to be false and filed complaint under Section 182 of the IPC against the petitioner while the petitioner filed complaint against the accused person on the same allegations on which the Judicial Magistrate summoned the accused, it was held that once the Magistrate was seized of the subject matter of the FIR in the complaint, the proceedings under Section 182 of the IPC were illegal

and without jurisdiction and complaint and subsequent proceedings were quashed accordingly. Similar view was taken in *CRM-M-34231-2015 titled as Sharda Devi's Case (Supra)*. In *Babita Vs. State of Punjab : (P&H) 2008 (4) R.C.R. (Criminal) 516* on inquiry cancellation report was prepared on 5.12.2002 and was presented in the Court of Illaqa Magistrate but on account of objections raised by the petitioner to the cancellation report, the same was not accepted by the learned Magistrate and the matter was remitted back for further investigation. It was observed by this Court that keeping in view the facts where the final opinion by the Court is yet to be expressed as regard the falsity of the complaint made by the petitioner, permitting the respondents to proceed with the proceedings under Section 182 of the IPC would amount to pre-judging the complaint filed by the petitioner and would amount to abuse of process of law and it would be proper, to secure the ends of justice, to quash the proceedings against the petitioner.

17. In view of the above discussed facts and circumstances of the case and also the above referred judicial pronouncements on the subject, complaint under Section 182 of the IPC, summoning order dated 16.08.2018 passed by the Judicial Magistrate Ist Class, Mukerian and all subsequent proceedings arising therefrom are illegal and constitute an abuse of process of the Court and are accordingly quashed.

18. The petition is allowed accordingly.

06.02.2020

Rajeev (rvs)

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No