

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

**CRM-M-4368 of 2019
Date of Decision:- 21.11.2022**

Hoshiar Singh

....Petitioner

Vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by:- Mr. Rakesh Sobti, Advocate
for the petitioner.

Mr. Naveen Kumar Sheoran, AAG, Haryana.

Mr. R.K. Garg, Advocate for respondent No.5.

KARAMJIT SINGH, J.

Prayer in the present petition filed under Section 482 CrPC is for quashing the Kalandara dated 28.08.2018 (Annexure P-15) filed by SHO Police Station Ambala Cantt under Section 182 IPC against the petitioner, which is now pending in the Court of learned Additional Chief Judicial Magistrate, Ambala and all the consequential proceedings arising thereto.

Brief facts of the case are that the petitioner gave application/complaint No.155 M/N dated 20.12.2016 to

Superintendent of Police, Ambala against respondent No.5-Vivek Kumra, which after investigation by SHO Police Station Ambala Cantt was found to be false. On this impugned Kalandara, Annexure P-15, was lodged by SHO, Police Station Ambala Cantt against the petitioner under Section 182 IPC.

On notice of motion, reply by way of affidavit of Ram Kumar Deputy Superintendent of Police, Ambala Cantt was filed on behalf of respondents No.1 to 4, whereas respondent No.5 also filed separate written reply.

The counsel for the petitioner has submitted that daughter of petitioner namely Balwinder Kaur was married to respondent No.5 Vivek Kumra on 14.09.2007 and out of said wedlock two sons were born. The counsel for the petitioner has further submitted that in-laws of Balwinder Kaur were not satisfied with the dowry given in marriage and finally she was thrown out of the matrimonial home by respondent No.5. The counsel for the petitioner further submitted that respondent No.5 also filed divorce petition against Balwinder Kaur and the same was later on dismissed as withdrawn. That respondent No.5 also filed one petition to get custody of his minor children but the same was also dismissed as withdrawn on 16.12.2014. The counsel for the petitioner has further submitted that respondent No.5 did not provide any maintenance to his wife and minor children and then petition under Section 125 CrPC was filed for grant of maintenance to minor children. Then

respondent No.5 filed second divorce petition on 21.08.2015 against Balwinder Kaur. In the meantime, the matrimonial dispute between respondent No.5 and Balwinder Kaur was settled amicably vide compromise deed Annexure P-1. However, respondent No.5 failed to honor the terms and conditions of said compromise. That on 13.12.2016 at about 3.40 pm, the petitioner along with his friend Bhupinder Singh was going on a motorcycle and due to traffic jam, they stopped near Geeta Gopal Chowk and in the meantime respondent No.5 came there and started saying that the daughter of petitioner should give divorce to him or else he will kill the petitioner. On this petitioner lodged complaint No.155 M/N dated 20.12.2016, Annexure P-2, against respondent No.5 with the Superintendent of Police, Ambala. The counsel for the petitioner has further submitted that as per the police authorities the said complaint was found to be false and resultantly the SHO of Police Station Ambala Cantt has filed impugned Kalandara dated 28.08.2018 (Annexure P-15) against the petitioner. The counsel for the petitioner has further submitted that the said Kalandara is not maintainable under the law, the reason being complaint Annexure P-2 was lodged by the petitioner with the SP Ambala while the impugned Kalandara has been presented by the SHO Police Station Ambala Cantt. The counsel for the petitioner has further submitted that as per the provisions of Section 195 CrPC a complaint under Section 182 IPC can be initiated against the petitioner only by the officer to whom

false information has been given or by a public servant to whom he is administratively subordinate. The counsel for the petitioner has further submitted that in the present case SHO Police Station Ambala Cantt was not competent to file the impugned Kalandara, he being subordinate to the Superintendent of Police Ambala, with whom the petitioner lodged complaint Annexure P-2.

The present petition is opposed by the State counsel as well as counsel appearing on behalf of respondent No.5. Both the said counsel while supporting the impugned Kalandara have submitted that the complaint Annexure P-2 lodged by the petitioner against respondent No.5 was found to be false and thus, Kalandara Annexure P-15 was filed by SHO Police Station Ambala Cantt as per the prescribed procedure of law and there is no illegality in the same.

I have considered the submissions made by the counsel for the parties.

Balwinder Kaur daughter of petitioner got married with respondent No.5 Vivek Kumra and there was marital discord between husband and wife. The petitioner lodged complaint (Annexure P-2) against respondent No.5 with the Superintendent of Police, Ambala. As per prosecution, the said complaint was found to be false and resultantly, Kalandara dated 28.08.2018, Annexure P-15, was filed by the SHO Police Station Ambala Cantt against the petitioner under Section 182 Cr.P.C.

The State in its written reply has admitted the fact that aforesaid complaint, Annexure P-2, was lodged by the petitioner against respondent No.5 to the Superintendent of Police, Ambala.

A bare reading of Section 195 Cr.P.C would show that the Court of competent jurisdiction can take cognizance of an offence punishable under Section 182 IPC only on the complaint in writing of the public servant concerned or his superior officer.

In the absence of any such complaint, the Court concerned cannot take cognizance of any offence punishable under Sections 172 to 188 of IPC. In this context, reliance be placed on *C. Muniappan Vs. State of Tamil Nadu (2010) 9 SCC 567*, wherein it was observed that for prosecution of a person under Section 188 IPC, there must be a complaint in writing by the public servant whose lawful order has been violated, as is the mandatory requirement of Section 195(1) Cr.P.C. Further in *Kulwinder Singh Vs. State of Punjab and another 2008 (4) RCR Criminal 418*, the coordinate Bench of this Court observed that the Kalandara presented by the SHO (administratively subordinate to the SSP) of the concerned police station is incompetent being not filed in consonance with the provisions of Section 195(1) Cr.P.C., as the complaint which was found to be false was filed before the concerned SSP (his superior officer).

Admittedly, in the instant case no such complaint/Kalandara was filed by the Superintendent of Police Ambala or his

superior officer, and thus, the bar provided under Section 195(1) Cr.P.C is clearly applicable and the Court cannot take cognizance of offence punishable under Section 182 IPC against the petitioner as per the law laid down in *Kulwinder Singh's case (supra)*. Further mere direction by the competent authority to present Kalandara on its behalf by the SHO Police Station Ambala Cantt will not comply with the provisions of law.

In the light of above, as the complaint, Annexure P-2, was lodged by the petitioner with the Superintendent of Police, Ambala but Kalandara, Annexure P-15, has been presented by the SHO Police Station Ambala Cantt (i.e. by the public servant who is administratively subordinate to the Superintendent of Police), the same cannot be held to be valid and legal in terms of Section 195(1) Cr.P.C.

Consequently, for the reasons mentioned above, the present petition is allowed and Kalandara, Annexure P-15, and all proceedings subsequent thereto are quashed.

The present petition stands allowed in the aforesaid terms.

21.11.2022

P. Chawla

**(KARAMJIT SINGH)
JUDGE**

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No