

CRM-M-46786-2021

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

CRM-M-46786-2021
Reserved on: 10.01.2022
Pronounced on: 09.02.2022

Mandeep Singh

...Petitioner

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

ANOOP CHITKARA, J.

1. Challenging the proceedings initiated under Section 110 of Cr.PC vide Kalandra dated 28.09.2021 (Annexure P-1) and order dated 08.10.2021 passed by SDM, Patiala, the alleged habitual offender has come up before this Court seeking its quashing.
2. Vide DDR dated 28.09.2021, the SHO of Police Station Sadar Patiala issued a proclamation (Kalandra) under Section 110 Cr.P.C. against the petitioner-Mandeep Singh. The said kalandra is extracted as follows:-

“The brief circumstances of the kalandra are as follows that it is found that the following 02 cases are registered against the respondent Mandeep Singh S/o Inderjit Singh R/o H.No. 194, Near Punjabi University, Village Shekhpura, Tehsil & District Patiala. On seeing the earlier circumstances of the respondent Mandeep Singh it is proved that the respondent Mandeep Singh is a person with cunning mind, who time and again bring illegitimate liquor from the outer States and does the work of selling it. In order to stop him from doing liquor business he had been made understand several times and from time to time the Government also issue instructions for stopping the liquor business, The respondent keeps on living at some unknown place for several years and keeps on doing drug business, but even then information keeps on pouring about selling drugs by the respondent in a concealed manner and he had been held also several times and during this ongoing year only 45 petis of liquor have been held from him. Therefore, keeping in view the aforesaid circumstances, it is most important to undertake proceedings U/s 110 Cr.PC against the respondent Mandeep Singh so that in order to stop drug business being done by aforesaid respondent and in order to keep intact law and order situation in the Police Station area, a kalandra U/s 110 Cr.PC is prepared against the respondent Mandeep Singh S/o Inderjit Singh R/o H.No. 194, Near Punjabi University, Village Shekhpura, Tehsil and District Patiala and the same is submitted in the court for trial. The

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aforesaid respondent may be summoned and trial may be held. After trial U/s 110 Cr.PC, he may be made liable for three years on good conduct on bail after obtaining muchalkajaati of Rs. 05 lakhs, so that the law and order situation may be maintained and the drug business can be stopped.

1. Case No. 193 dated 19.08.2017 U/s 61/1/14 Excise Act, P.S. Sadar, Patiala

2. Case No. 85 dated 09.06.2021 U/s 61, 78(2)/1/14 Excise Act and addition of offence U/s 417, 465, 468, 471, 120-B IPC P.S. Urban Estate, Patiala”

3. Aggrieved by the issuance of said Kalandra the petitioner came up before this Court under Section 482 Cr.P.C.

4. The State filed its reply through Deputy Superintendent of Police (Rural), Patiala, who supported the stand taken by the SHO, Police Station Sadar, Patiala, District Patiala. It was further mentioned that even the father of the petitioner is a habitual offender.

5. Section 110 Cr.P.C. provides for security of good behavior from habitual offender and such orders have to be passed by the Executive Magistrate. In the present case, the Sub Divisional Magistrate, Patiala, accepted the report and passed the following order:-

“The file was presented. The name was announced. The respondent has come present in the court. The respondent has presented bail, which is approved after verification. The kalandra was examined. The local Police had made this kalandra. U/S 110 Cr.PC against the respondent for being criminal type of person with cunning mind who is habitual of committing crime repeatedly and the same has been presented in this court. On perusal of kalandra it has been found that the respondent, who is a criminal as per the police report and is habitual of committing crime repeatedly, is dangerous for law and order. Therefore, keeping in view the law and order situation, the respondent Mandeep Singh S/o Inderjit Singh R/o H. No. 194, Near Punjabi University, Village Shekhpura, Tehsil and District Patiala is made liable for 01 year on Rs. 3,00,000/ (Rs. Three Lakh) good going Section 117 (3) Cr.PC. The file may be consigned to the record room as per procedure, after compliance.”

6. The crucial words of Section 110 Cr.P.C. are ‘habitual offender’. Relevant portion of the Punjab Habitual Offenders (Control and Reform) Act, 1952, reads as under:-

Punjab Habitual Offenders (Control and Reform) Act, 1952.

S. 2 (3) "Habitual Offender" means a person -

(a) who, during any continuous period of five years, whether before or after the commencement of this Act, has been convicted and sentenced to imprisonment more than twice on account of any one or more of the offences mentioned in the Schedule to this Act committed on different occasions and not constituting parts of the same transaction; and

(b) who has, as a result of such convictions suffered imprisonments at least for a total period of twelve months.

Explanation. - (1) A conviction which has been set aside in appeal or revision and any imprisonment suffered in connection therewith shall not be taken into account for the above purpose.

Explanation. - (2) In computing the period of five years, and periods spent in jail either under a sentence of imprisonment or under detention shall not be taken into account.

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Schedule

1. [All offences mentioned in Chapter XII of the Indian Penal Code.]
2. [All offences punishable under the following sections of the Indian Penal Code]
:-
302, 303, 304, 307, 311, 326, 327, 328, 329, 363, 364, 365, 366-A, 366-B, 368, 369, 376, 377, 379, 380, 381, 382, 384, 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 409, 411, 412, 413, 414, 420, 449, 450, 454, 455, 456, 457, 458, 459 and 460.
3. [Any offence under section 3 of the Public Grabbing Act, 1867.]
4. [Any offence under Essential Supplies (Temporary Powers) Act (Act No. XXIV of 1946) Rules and orders framed and issued thereunder.]

7. As mentioned earlier the criminal history of the petitioner pertains to Excise act. The Schedule mentioned under Habitual Offenders Act does not apply to cases under Excise Act. Thus the impugned order is patently illegal.

8. The second case against the petitioner apart from one under the Excise Act is under provisions of IPC. A perusal of the Habitual Offenders Act reveals that the said Act applies only to those who have been convicted for offence more than twice on account of commission of offence mentioned in the schedule of the Act. Even as per the Kalandra, the first case against the petitioner is under Excise Act and second case is under IPC Sections i.e. 417, 465. 468, 471 & 120-B. The fate of the second is not known, the petitioner's case is thus not squarely covered in the schedule.

9. Given above, petition is allowed. Annexure P-1 and order dated 08.10.2021 (Annexure P-2), are hereby set aside. Pending applications, if any, also stand disposed of.

(ANOOP CHITKARA)
JUDGE

February 09, 2022
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Whether speaking/reasoned:	Yes
Whether reportable:	No.