

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

**CRM-M No. 54327 of 2021 (O&M)
Date of Decision: 21.02.2022**

Ghanshyam Goyal and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Ved Priya Malik, Legal Aid Counsel (HCLSC)
for the petitioners.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana

SURESHWAR THAKUR, J. (ORAL)

CRM-44580-2021

1. The application is allowed, as prayed for.
2. Exemption from filing the certified copies of Annexures P-1 to P-12 is granted, subject to all just exceptions.

MAIN CASE

1. The petitioners, with respect to an incident, which occurred on 29.06.2020, relating to the throwing of child excreta by the neighbour, in front of their house, have made representations / complaints, respectively appended as Annexures P-1, P-5, & P-7 to P-12, before the authorities concerned. However, since thereons the State machinery has not yet been galvanized. Consequently, the petitioners pray that directions be issued to the respondents concerned, to initiate further necessary action thereons.

2. However, since upon the respective complaints, the State machinery has filed Kalandra against the offenders concerned, under Section 107/151 of the Cr.P.C. before the learned Executive Magistrate

concerned. Nonetheless, the petitioners are dis-satisfied with the above

action, as is taken by the police authorities concerned, against the offenders concerned. Consequently, a direction is asked qua the official respondents concerned, that the afore action if not taken against the errants concerned, be not taken, and, that rather the relevant penal provisions as are applicable qua the offenders, be drawn against them.

3. Even though, the afore made prayer, cannot be granted, by this Court, as, it is the statutory duty of the police machinery concerned, to, in its discretion, choose to apply against the offenders concerned, the relevant penal provisions concerned. However, if the penal provisions concerned, are not correctly drawn during the investigations, being conducted, by the police officers concerned, and, are rather also not the ones which are applicable against the offenders concerned. Thereupon, it is open to the aggrieved, to yet ask for a legally permissible mandamus, being made upon the respondents concerned, to draw action against the errants / offenders concerned, through theirs applying against them, the penal provisions other than the ones which are being applied against them by the police machinery.

4. Be that as it may, and if so, even if there is an incorrect application of penal provisions against the offenders concerned, inasmuch as, the latter proceeding to draw a Kalandra against the offenders concerned, under Section 107/151 of the Cr.P.C. and, thereafter presenting it before the learned SDM concerned, thereupon, subject to further lawful enquiries or investigation(s), being made by the IO concerned, especially for curbing the afore menace, to draw inculpability against the offenders concerned, under specific statutory provisions, carried either in the IPC or some other specific

statutory enactment. Consequently, thereupon, the IO concerned, may not, if he is not filed the Kalandra, as, drawn against the offenders concerned, under the afore provisions of the Cr.P.C., hence institute the same, before the SDM concerned, rather he shall make a lawful re-enquiry and/or re-investigation into the offence(s), as, allegedly committed by the offenders concerned, inasmuch as, the offenders concerned, allegedly throwing child excreta in front of the house of the petitioners, and, if there are specific statutory provisions making the afore act inculpable, or, if there are provisions in the IPC, which make the afore penally inculpable, to, in accordance with law, draw under the statute(s) (supra), hence appropriate action under law against the errant(s) concerned.

5. Disposed of.

February 21, 2022

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>