

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

246 CRM M-3781 of 2022
Date of Decision: 15.12.2023

Anil Kumar ...Petitioner

Versus

State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Ms. Amrita Garg, Advocate, for the petitioner.
Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the impugned Kalendra dated 26.12.2021 under Section 182 IPC (Annexure P-1) and the order dated 03.01.2022 (Annexure P-3) and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that the petitioner is a J.B.T. teacher and also works as social worker. He is aggrieved by the presentation of Kalendra (Annexure P-1), which was registered vide DDR No. 15 dated 26.12.2022 under Section 182 IPC, Police Station Bahin, District Palwal.

3. Learned counsel for the petitioner contended that the petitioner had filed a complaint dated 10.09.2021 to the Superintendent of Police, Jhajjar. The copies of the said complaint were also addressed to the Chief Minister of Haryana, the Director General of Haryana and at the CM window, which were sent vide

e-mail dated 29.11.2021 regarding the involvement of Tehsildar Rohtash, in case of cheating and impersonation in STET Examination 2009, where he appeared in the written examination for his brother-in-law, namely, Joginder. In fact, Joginder, was also arrayed as an accused in a case FIR No. 221 dated 30.09.2015, which was registered against JBT Teachers, who were found involved in the offence of cheating and impersonation in STET Examination 2009. Vide the said complaint, the petitioner had prayed for inquiry against Rohtash, Tehsildar in the above-mentioned offences as Rohtash was a senior revenue official and should not have indulged in such practices. The notices of the complaint were annexed as Annexure P-2 (collectively). Learned counsel contended that now the proceedings had been initiated in the Court of D/ACJ(SD)-cum-SDJM, Hathin for the offence under Section 182 IPC and vide order dated 03.01.2022 (Annexure P-3), the petitioner was ordered to be summoned under Section 182 IPC. Learned counsel for the petitioner contended that the petitioner had submitted his complaints to the Superintendent of Police, Jhajjar, the DGP Haryana, the Chief Minister Haryana and at CM window and the proceedings under Section 182 IPC have been initiated with reference to the aforesaid complaints submitted by the petitioner. In fact, it was alleged that on verification of the allegations, the facts of the complaints submitted by the petitioner against Rohtash, Tehsildar, were not found correct and the Kalendra under Section 182 IPC was filed against the petitioner.

4. Learned counsel for the petitioner submitted that the Hon'ble Supreme Court had held in number of judgements that the complaint/Kalendra under Section 182 IPC is not maintainable, if, it is not in conformity with the provisions contained under Section 195 Cr.P.C. As per the provisions of Section 195 Cr.P.C., the complaint under Section 182 IPC can only be made by the officer, to whom, the complaint was made or some one administratively superior to him. In the present case, the complaint dated 10.09.2021 was submitted to the Superintendent of Police Jhajjar, the DGP Haryana, the Chief Minister Haryana and the CM window. Thus, the complaint under Section 182 IPC could have been made either by the Superintendent of Police Palwal, the DGP Hayana or any other public servant, to whom, they are administratively subordinate. However, in the present case, the Kalendra dated 26.12.2021 (Annexure P-1) was got registered on the complaint submitted by ASI Om Parkash from Police Station Bahin, District Palwal, which is in violation of the provisions of Section 195 Cr.P.C.

5. Learned counsel for the petitioner has relied upon **Babita Vs. State of Punjab and another, 2008 (4) RCR (Crl.) 516**, wherein, in similar circumstances, when a complaint was given to the SSP, Ludhiana and on verification, the same found containing false information and the proceedings under Section 182 IPC were initiated by SHO of the concerned police station, then this Court has quashed

the Kalendra. The operative part of the judgment in **Babita's** case (supra) is reproduced as under: -

*“As far as second contention of counsel for the petitioner regarding the kalendra being incompetent on the ground that the same has been filed under the signatures of SHO, Police Station, Model Town, Ludhiana whereas the complaint was made to SSP, Ludhiana is concerned, the issue has been considered in detail by this Court in **Criminal Misc. No.60096-M of 2004 (Surjit Singh v. State of Punjab) decided on 6.2.2008**, wherein relying upon judgment of Hon'ble the Supreme Court in **Daulat Ram v. State of Punjab, AIR 1962 Supreme Court 1206**, it has been opined that if the prosecution is to be launched under Section 182 IPC, the complaint in writing should be made by the public servant concerned and not by any other person. Paras 3 and 4 of the judgment can be referred for reference which read as under:-*

"3. The only question in this case is whether a complaint in writing as required by Section 195 had been presented by the public servant concerned. The public servant who was moved by the appellant was undoubtedly the Tehsildar. Whether the appellant wanted the Tehsildar to take action or not, the fact remains that he moved the Tehsildar on what is stated to be a false averment of facts. He had charged Hans Raj and Kans Raj with offences under the Penal Code and he had moved his superior officer for action even though he might have stated in the letter that it was only for his information. We are prepared to assume that he expected that some action would be taken. In fact his second letter that he had

compromised the matter and the proceeding might be dropped clearly shows that it anticipated some action on the part of his superior officer. The question is therefore whether under the provisions of Section 195, it was not incumbent on the Tehsildar to present a complaint in writing against the appellant and not leave the court to be moved by the police by putting in a charge-sheet. The words of Section 195 of the Criminal Procedure Code are explicit. The section read as follows:-

"(1) No Court shall take cognizance-(a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code. except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

" The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of Section 195. The words "no court shall take cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.

4. Now the offence under Section 182 of the Penal Code, if any, was undoubtedly complete when the appellant had

moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that Section 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar." (Sic This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of Section 195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained."

6. In **State of U.P. v. Mata Bhikh & Others, (1994) 4 SCC 95** following the judgment of Daulat Ram's case (supra), Hon'ble the Supreme Court opined as under:-

"A cursory reading of Section 195(1)(a) makes out that in case a public servant concerned who has promulgated an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate, i.e., some other public servant who is his official superior and under whose administrative control he works."

7. Similar view has been expressed by Hon'ble the Supreme Court in a recent judgment in **P.D.Lakhani and another v. State of Punjab and others, 2008 AIR SCW 3357** relying upon its earlier judgment in Daulat Ram's case (supra) and Mata Bhikh's case (supra). Relevant para thereof is extracted below:-

"No complaint, therefore, could be lodged before the learned Magistrate by the Station House Officer. Even assuming that the same was done under the directions of Senior Superintendent of Police, Jalandhar, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore, cannot be done by an inferior officer. It does not provide for

delegation of the function of the public servant concerned.

We may notice that in terms of sub-section (3) of Section 340 of the Code, a complaint may be signed by such an officer as the High Court may appoint if the complaint is made by the High Court. But in all other cases, the same is to be done by the presiding officer of the court or by such officer of the court as it may authorize in writing in this behalf. Legislature, thus, wherever thought necessary to empower a court or public servant to delegate his power, made provisions therefor. As the statute does not contemplate delegation of his power by the Senior Superintendent of Police, we cannot assume that there exists such a provision. A power to delegate, when a complete bar is created, must be express; it being not an incidental power."

Even on this ground, the case set up by the petitioner deserves acceptance as admittedly the complaint was filed before the SSP, Ludhiana whereas kalendra was presented under the signatures of SHO.

For the reasons mentioned above, the impugned kalendra Annexure P.1 presented to the Magistrate and all proceedings subsequent thereto are quashed.

The petition is disposed of."

10. In reply to the aforesaid submissions, learned State counsel submitted that the proceedings under Section 182 IPC had been initiated against the petitioner by ASI Om Parkash and Inspector

Dharam Chand, the then SHO, Police Station Bahin, District Palwal, as the complaints submitted against Rohtash Tehsildar and Joginder Singh were found to be false. Even, learned State counsel fairly conceded that there was illegality in initiating the proceedings, against the present petitioner.

11. I have heard the learned counsel for the parties and perused the record.

12. In the present case, the complaint was admittedly addressed to the Superintendent of Police, Jhajjar and the Director General of Police, Haryana whereas the impugned Kalendra under Section 182 IPC has been initiated by ASI Om Parkash and in view of the judgments passed by the Hon'ble Supreme Court, it can be safely concluded that ASI Om Parkash was not competent to file the Kalendra.

13. In view of the above, the petition is allowed and the Kalendra dated 26.12.2021 (Annexure P-1) and all subsequent proceedings arising therefore including the order dated 03.1.2022 (Annexure P-3) are ordered to be quashed.

15.12.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No