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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-10328-2022 (O&M)

Date of decision: July 03, 2023

Laxmi Narain Sharma

....Petitioner

versus

State of Haryana and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

**Present:-** Mr. Saurabh Dalal, Advocate for petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

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**ARUN MONGA, J. (ORAL)**

**CRM-8873-2022**

For the reasons stated in application, same is allowed subject to all just exceptions.

**Main case (O&M)**

Accused-Laxmi Narain Sharma (petitioner) has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) for quashing impugned Kalandra dated 07.09.2015, under Sections 182 Cr.P.C. bearing No.CRM-90-2015 dated 08.09.2015 pending before learned Judicial Magistrate Ist Class, Rohtak and consequential proceedings arising therefrom.

2. According to prosecution version, petitioner filed complaints before the Superintendent of Police, Rohtak leveling various allegations against several persons including Police also. The inquiry was marked to various officers including SHO and the DSP. The complaint made by the petitioner was found to be false. On 03.04.2015, the then Inspector General of Police, Rohtak ordered the Superintendent of Police, Rohtak to take action against the petitioner under Section

182 IPC. Accordingly, the impugned Kalandra Annexure P-1 has been filed by SHO, Sampla.

3. Learned counsel for the petitioner contends that in view of Section 195 (1)(a) Cr.P.C., Kalandra under Section 182 IPC could be instituted only by the public servant concerned to whom the alleged false complaint was made or by some other public servant to whom he is administratively subordinate. However, in the instant case, the impugned Kalandra has been instituted by SHO who is not competent. The alleged false complaint had since been made to Superintendent of Police and therefore, cognizance of the offence under Section 182 IPC can be taken only on a complaint by the Superintendent of Police. He submits that petitioner has also filed private criminal complaint in the matter against certain police officials.

4. On the other hand, learned State counsel relying on a decision of this Court rendered in the case of **D. S. Rawat versus State of Punjab**<sup>1</sup> contends that SP, Rohtak had authorized the SHO, Sampla to file the Kalandra and, therefore, Section 195 Cr.P.C. has been complied with.

5. I have considered the rival contentions and perused the file.

6. Contention raised by the State counsel cannot be accepted. In the instant case, there is only a bare averment as stated in para-5 of reply that impugned Kalandra had been prepared by the SHO because SP, Rohtak had authorized him to prepare it. Dehors, there is no material on record in support thereof. In the case of D.S. Rawat (supra) also, similar plea had been taken in the reply but the same was repelled and the Kalandra was quashed. In the premise, shoe is on the other foot as judgment in the case of D. S. Rawat (supra) rather goes against the State.

7. On the other hand, provision of Section 195(1)(a) Cr. P.C. is very clear and unambiguous. For ready reference, Section 195(1)(a) of Cr. P.C. is as under:-

***“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—***  
*(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or*  
*(ii) of any abetment of, or attempt to commit, such offence, or*  
*(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.”*

The Kalandra in question for the offence under Section 182 IPC could be instituted only by the Superintendent of Police, Rohtak (or his superior) to whom the alleged false complaint was made and not by the SHO.

8. In view of the reasons aforesaid, I find that petitioner cannot be prosecuted on the basis of impugned kalandra which has not been instituted by a competent authority. Therefore, no cognizance of the alleged offence can be taken.
9. Resultantly, instant petition is allowed and impugned Kalandra (Annexure P-3) is quashed along with all consequential proceedings arising therefrom.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)  
JUDGE

July 03, 2023  
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No