

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

CRM-M-17449-2011 (O&M)

Reserved on: 19.09.2023

Pronounced on: 22.09.2023

Krishan Chander Singh

. . . . Petitioner

Vs.

State of Haryana

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. A.P.S. Deol, Sr. Advocate, with
Mr. Vishal Lamba, Advocate, for the petitioner.

Mr. Vipul Sherwal, AAG, Haryana.

None for the applicant - complainant.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.PC, prayer is made by the petitioner to quash Kalendra under Section 182 of the IPC dated 05.09.2010 (Annexure P1) and summoning order dated 24.02.2011 (Annexure P2) passed by Id. Judicial Magistrate, 1st Class, Ambala along with all subsequent proceedings.

2. (i) It is contended by Id. counsel that petitioner had purchased 11 acres 15 marlas of land situated in Village Kambas from his father-in-law Kanwar Raja Ram Singh in the year 1970, though the sale deed was got registered in the name of his wife Pratha Devi. Mutation was duly sanctioned in this regard and ever-since then, the Girdawari entries are in the name of Pratha Devi. Petitioner and his wife Pratha Devi got a Will registered on 04.04.1987 regarding their immovable properties to be

inherited by the either or survivor. On the death of Pratha Devi in 2001, the land in question was mutated in favour of the petitioner vide mutation Annexure P3. After the death of Kanwar Raja Ram Singh, the father-in-law of the petitioner, in December 2004, Prithvi Singh Chauhan, his brother-in-law, started interfering in his possession.

(ii) As per ld. counsel, petitioner had collected building material in his land and had also affixed the gate. On 11.01.2005, Prithvi Singh Chauhan along with various others reached the spot, forcibly entered therein and took away all the building material like bricks, slabs, cement bags etc. At that time, said Prithvi Singh was holding a revolver and other persons were armed with lathis and dandas etc. Petitioner lodged FIR No.6 dated 12.01.2005 at Police Station Barara, District Ambala under Sections 148/149/447/427/382/506 IPC in this regard.

(iii) As Prithvi Singh Chauhan, brother-in-law of the petitioner was threatening the petitioner so as to grab the land, so petitioner filed Civil Suit in which application under Order 39 Rules 1 & 2 read with Section 151 CPC was decided in his favour vide order dated 16.03.2005 (Annexure P4), which order was upheld up to this High Court.

(iv) It is alleged that under the influence of Prithvi Singh Chauhan, police filed a cancellation report in respect of the FIR No.6 lodged by the petitioner on 24.04.2005. Petitioner filed protest petition, on which the Magistrate took cognizance and summoned the accused Prithvi Singh Chauhan etc. However, CRM-M-925-2009 filed by Prithvi Singh Chauhan was allowed by this High Court on 25.07.2010, whereby the protest petition and the summoning order were set aside. The Special Leave Petition

bearing No.9316 of 2010 filed by the petitioner was dismissed on 10.01.2011 by Hon'ble Supreme Court (Annexure P8).

(v) Ld. counsel contends that thereafter under the influence of Prithvi Singh Chauhan, Amar Singh, SHO, Police Station, Barara filed Kalendra (Annexure P1) on 05.09.2010 against the petitioner in the Court of Id. JMIC, Ambala, wherein summoning order dated 24.02.2011 (Annexure P2) has been passed. Ld. counsel contends that as the cancellation report had been filed in the Court of Ld. JMIC, Ambala on 24.04.2005, therefore, the Kalendra having been filed in the Court on 05.09.2010 i.e., after more than 5 years, is clearly barred by time as per the provisions of Section 468 to be read with Section 469 CrPC.

(vi) Ld. counsel has referred to *Harbhajan Singh Bajwa Vs. Senior Superintendent of Police, Distt. Patiala and another, 2000 (3) RCR (Criminal) 94* and *Jagraj Singh Vs. State of Punjab, 1993 (2) RCR 666* to support his contention.

With all these submissions, prayer is made for quashing the Kalendra, impugned summoning order and the subsequent proceedings.

3. As per the reply filed by Sh. Kushal Singh, DSP, Barara, on behalf of the respondent/State, the litigation was between petitioner and Prithvi Singh Chauhan and his family and that Kalendra under Section 182 of the IPC (Annexure P1) has been filed against the petitioner in accordance with law because the contents of FIR got registered by the petitioner was found to be false. Controverting all the contentions as raised in the petition, prayer has been made for dismissal of the same.

4. Application bearing CRM No. 7857 of 2012 was filed on behalf of Prithvi Singh Chauhan, to be impleaded as respondent. However, nobody put appearance on behalf of said applicant Prithvi Singh Chauhan at the time of arguments.

5. I have considered submission of both the sides and have appraised the record.

6. The uncontroverted facts, which emerge on perusal of the paper book are that FIR was lodged by the petitioner against Prithvi Singh Chauhan and others on 12.01.2005 and after necessary investigation, the cancellation report was filed on 24.04.2005. On filing of the protest petition by the petitioner, Prithvi Singh Chauhan etc. were summoned on 21.04.2008, but the protest petition as well as summoning order were set aside by this Court on 25.07.2010 in CRM-M-925-2009. It is thereafter that Kalendra (Annexure P1) under Section 182 IPC to prosecute the petitioner has been filed on 24.02.2011.

7. The sole question to be considered is that whether in the above facts and circumstances, cognizance for offence under Section 182 IPC can be taken by the court; or whether it is barred by limitation.

8. Section 182 IPC reads as under: -

“182. False information, with intent to cause public servant to use his lawful power to the injury of another person. —Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of

either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

9. The offence under Section 182 IPC is punishable with imprisonment for a term which may extend to six months or with fine or with both.

10. Sections 468 & 469 CrPC are relevant to the case, in order to see as to within which time, the Kalendra under Section 182 IPC could have been filed. These provisions read as under: -

‘Section 468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be--

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

“Section 469. Commencement of the period of limitation--

(1) the period of limitation, in relation to an offender, shall commence –

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge

*of such person or to any police officer, whichever is earlier;
or*

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.”

11. Now the question arises as to whether the period of limitation will start to run from the time when the police on investigating the matter in case FIR No.6 dated 12.01.2005 lodged by the petitioner, found the allegations contained therein to be false and prepared the cancellation report accordingly; or whether the period of limitation will start on dismissal of the protest petition.

12. Aforesaid issue came up for consideration before this court in ***Jagraj Singh Vs. State of Punjab, (1993) 2 RCR (Criminal) 633***, wherein it was observed:

“6. This is an admitted fact that enquiry was held in the case by Deputy Superintendent of Police, who came to the conclusion that case against Zora Singh, Sukhdev Singh etc. was false and on 5-8-1990 S.I Daya Singh made a report in the Rojnamcha and recommended action under Section 182 of the Indian Penal Code against the petitioner. The calendra was, however, presented in Court in July, 1992 i.e after about 23 months of the detection of the fact that FIR No. 64 of 1990 was false. Under Section 468 of the Code of Criminal Procedure the period of limitation for filing a Calendra under Section 182 IPC is one year because the punishment for the offence is prescribed up to six months or fine of Rs. 1000/- or both. The limitation started running from 5-8-1990 and no Court could take cognizance of the offence after the expiry of period of limitation”.

13. Again, in ***'Gammi @ Gama versus State of Punjab and another, (2009) 2 RCR (Criminal) 1***, it has been held by this court: -

“9. After investigation of the FIR recorded on 2.2.2001, the cancellation report was filed before the Court on 15.4.2001. It can, thus, be said that by 15.4.2001, it was in the knowledge of police that false FIR has been registered by or at the behest of the petitioner. This was further given colour of falsehood, when complaint in this regard, in the form of calendra under Section 182 IPC, was filed on 12.8.2003. This was taken notice of by the Court on 25.8.2003 and notice issued to the petitioner and others. It can, thus, be stated that by 25.8.2003, the offence as well as offenders were known. Offence in this case was committed on the date when the false FIR was filed on 2.2.2001. By 15.4.2001, the offence and the offender were known. The complaint, thus, could be filed within one year from 15.4.2001. It was filed only on 12.8.2003. Thus, it can safely be stated that on date when the cognizance of the offence was taken by the Magistrate i.e. On 25.8.2003, the period of limitation, as prescribed under Section 468 Cr.P.C., had already expired. Section 468 Cr.P.C. would bar the Magistrate to take cognizance of the offence in this case.

10. In ***State of Punjab v. Sarwan Singh, 1981 Crl.L.J.722***, the Hon'ble Supreme Court held that the object of Criminal Procedure Code in putting a bar of limitation on prosecution was clearly to prevent the parties from filing cases after a long time, as a result of which the material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions long after the date of offence. Further, in *Moti Pathak and others v. State of U.P., 1988(2) Crimes 659*, it was observed that the plea of bar of limitation can be raised at any stage of proceedings and that even when it was not raised, the Magistrate should have considered his power and authority in the light of sections 468 and 473 Cr.P.C.”

14. In ***'Sher Ali son of Lal Hussain versus State of Punjab through Home Secretary and another, (CRM-M-20262-2009 decided on August 05, 2010)***, it has been observed: -

“6.Undisputedly, FIR, was lodged, by one Nizamuddin, whose name was, later on, found to be false, and, on the other hand, he was found to be Kaka. There is, no dispute, that enquiry, was held, by the Deputy

Superintendent of Police (HQ), Ropar, and, he found, that the FIR, had been falsely lodged, by alleged Nijamuddin, in connivance with the petitioner, and other coaccused. The cancellation report, in the FIR, was prepared, on 15.04.01, and, it was submitted, in the Court, on that day. The Kalendra, was prepared, for taking action, against the petitioner and others, for lodging false complaint, and, was filed, on 12.08.03, in the Court of Chief Judicial Magistrate. The maximum punishment, provided for the offence, punishable under Section 182 IPC, is six months. The prosecution, therefore, could be launched, by way of filing the Kalendra, against the petitioner, within one year, from the date the cause of action accrued.

7. *The perusal of the provisions of the aforesaid Sections, clearly goes, to show, that the period of limitation, in relation to an offence, would commence, from different dates, depending upon three situations, as noticed, in Section 469(a)(b)(c). Thus, the period of limitation, would commence, from the date of offence, or from some different dates, depending upon the knowledge about the offence or identity of the offender. The period of limitation, accordingly would commence, from the date of offence, if the identity of the offenders is known. After investigation of the FIR, recorded on 02.02.01, cancellation report, was filed, on 15.04.01. It means that, on 15.04.01, the respondents, came to know, that false FIR, had been got registered by alleged Nijamuddin, at the behest of the petitioner. Kalendra, under Section 182 IPC, therefore, could be filed, within a period of one year, from 15.04.01, when the respondents, came to know, with regard to the falsity of the FIR. On the other hand, it was filed, on 12.08.03, in the Court. The Court, issued notice, for 25.08.03 The Kalendra, having been filed, on 12.08.03, and, cognizance thereof, having been taken, on 25.08.03, it could be said, that the prosecution, launched, was barred by limitation. In **State of Punjab v. Sarwan Singh, 1981, Crl. L.J, 722**, the Apex Court, held that, the object of Criminal Procedure Code, in putting a bar of limitation, on prosecution, was clearly, to prevent the parties, from filing cases, after a long time, as a result whereof, the material evidence may disappear and also to prevent abuse of the process of Court, by filing vexations and belated prosecutions, long after the date of offence. In **Moti Pathak and others v. State of U.P, 1988(2), Crimes, 659**, it was held, that the plea of bar of limitation, can be raised, at any*

stage of proceedings, and, even when, it was not raised, the Magistrate, should have considered his power and authority, in the light of Sections 468 and 473 Cr.P.C.....”

15. Apart from above, in ***Kulwant Kaur Vs. State of Punjab, 2019 (1) Law Herald 471***, it has been held that limitation for filing the complaint under Section 182 IPC will start when the police had prepared the cancellation report and that there was no legal warrant for the argument that the limitation period will start when the cancellation report is accepted by the Magistrate. This Court further held as under: -

“Although, the learned counsel for the State has submitted that the limitation for filing the complaint under Section 182 IPC would start from the date when the cancellation report is accepted by the Magistrate, however there does not appear to be any legal warrant for this argument. The fact remains that at the time when the police had prepared the cancellation report, it was sure, at least from its own side, that the information given to them was not correct. The acceptance of the cancellation report, by no means, is an order on veracity of the facts involved in the case. It is not a judgment on merits of the case as such. Despite acceptance of cancellation report by the Magistrate qua the FIR, the complainant can prove his/her case and get the accused convicted in the case by proceeding further as a complaint case. Therefore, the cancellation report, at the best, can be seen as acceptance of correctness of the 'investigation' by the police and not as a certificate that the facts mentioned in the FIR are incorrect. Therefore, it cannot be said that the police would be justified in waiting till acceptance of the cancellation report; for initiating any proceedings under Section 182 of IPC. The limitation for filing complaint under Section 182 IPC cannot be extended for the reasons beyond the statutory provisions, just because of conduct of the Investigation Officer himself.”

16. The legal position as discussed above, would make it quite clear that limitation to file the Kalendra under Section 182 of the IPC will start running from the date of preparation of the cancellation report, as it is

on that day that police had come to know about the false allegations of the FIR. The limitation will not extend till the cancellation report is accepted by the Court or till the protest petition is decided by the Court.

17. On account of entire discussion as above, I find merit in this petition, because in the present case, the cancellation report in respect of FIR No.6 dated 12.01.2005 registered at Police Station Barara, had been prepared by the police on 24.04.2005 and the Kalendra dated 05.09.2010 has been filed in the Court on 24.02.2011 i.e., much beyond the limitation period.

18. Consequently, present petition is allowed. Kalendra (Annexure P1) and summoning order dated 24.02.2011 (Annexure P2) passed by Id. Judicial Magistrate, 1st Class, Ambala along with all subsequent proceedings, arising therefrom are hereby quashed.

Pending application(s) is any shall stand disposed of.

(DEEPAK GUPTA)
JUDGE

22.09.2023

Vivek

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |