

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

245

CRM M-17855 of 2017 (O&M)

Date of Decision: 16.08.2023

Mohinder Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

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

Present : Mr. Gurcharan Singh Bains, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

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 kalendra under Section 182 IPC (Annexure P-4), presented by the police of Police Station Sanour, District Patiala in complaint No. 102/FR dated 02.03.2016, filed by the petitioner before SSP Patiala against respondent No. 2 and all subsequent proceedings arising therefrom.

2. Learned counsel for the petitioner contends that the petitioner is the owner in possession of land comprised in Khewat No. 509/44 Khatuni No. 692, Khasra No. 203//19/7-12, 203//20/1/3-4, 203//21/1/6-13 and 203//22/1/1-14 total unit 4, total area 19 Kanals and 3 Marlas, 131/383 share situated in village Sanaur as per the jamabandi for the year 2008-2009 and even the copy of the jamabandi was filed by the petitioner as annexure P-1. He further contends that

respondent No. 2 was working as a Head Constable in the Office of SSP Patiala and his land is near the land of the petitioner. There is a passage of 11 feet width between the lands of the petitioner and the respondent No. 2, however, by taking undue advantage of his post, the respondent No. 2 had illegally encroached upon the said passage and had extended threats to the petitioner. Not only this, the respondent No. 2 alongwith some other persons had severely beaten up the petitioner on 28.05.2016 and also confined in lockup for about 05 hours. Against the atrocities committed by respondent No. 2 and his accomplices, the petitioner filed a complaint before the police authorities, but no action was taken. When the police did not take any action, the petitioner was constrained to approach this Court by way of filing of CRM M-28436 of 2016 for taking action against the respondent No. 2 and others and for handing over the investigation of the complaint lodged by the petitioner against respondent No. 2 to some senior police officers or to some independent investigating agency. However, vide order dated 23.08.2026 (Annexure P-3), this Court directed the SSP, Patiala, to look into the grievances unfolded by the petitioner in his representation dated 30.05.2016 and to take appropriate action in accordance with law within a period of 03 months from the date of receipt of the certified copy of the order. It was also directed that during the inquiry, if it comes to the light that there was any threat perception to the petitioner at the instance of

private respondents, necessary protection be also provided to him. Learned counsel further contends that in the meanwhile, under the influence of respondent No. 2, SHO, Police Station Sanour, District Patiala lodged a kalendra under Section 182 IPC (Annexure P-4) against the present petitioner by levelling the frivolous and unfounded allegations against him. The petitioner in the meantime had also moved an application dated 06.06.2016 before the Tehsildar Patiala for demarcation of his land by alleging that he had wanted to get the demarcation of land done as the passage from the land of the petitioner had been encroached upon by respondent No. 2 by taking undue advantage of his post in the police department. Learned counsel further contends that even otherwise, the complaint in the present case was moved before the SSP, Patiala and the Inspector/SHO, Police Station Sanour was not competent to present the kalendra under Section 182 IPC against the petitioner, in view of the provisions contained under Section 195 Cr.P.C.

3. A short reply has been filed by way of an affidavit of the Deputy Superintendent of Police, Rural, Patiala, on behalf of respondent No. 1. Learned State counsel submitted that an application No. 102/FR dated 02.03.2016 was filed by the petitioner before the SSP Patiala against Head Constable Daljit Singh, respondent No. 2, Jaspreet Singh, Jasveer Singh and Sukhdev Singh and others and the inquiry of the said application was conducted by the Deputy

Superintendent of Police (Headquarter), Patiala. Learned State counsel submitted that the parties were called by the Inquiry Officer and their statements were recorded and after conducting the inquiry, the Investigating Officer submitted his inquiry report (Annexure R-1 dated 30.04.2016). As per the inquiry report, it was found that it was the petitioner who had included the passage in his land and not the respondent No. 2 and respondent No. 2 had not encroached upon the passage. Learned State counsel further submitted that the inquiry officer recommended to take action under Section 182 Cr.P.C. against the petitioner and after approval by the SSP Patiala, the kalendra under Section 182 Cr.P.C. was filed by the local police against the petitioner.

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

5. The main contention of the learned counsel for the petitioner is that in view of the provisions enshrined in Section 195 Cr.P.C., no Court can take cognizance of an offence under Section 182 IPC except on a complaint in writing of the public servant concerned, i.e. SSP or of some other public servant, to whom, he is administrative subordinate. The relevant extract of Section 195 Cr.P.C. has been reproduced below:-

Section 195 in The Code Of Criminal Procedure, 1973

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;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub- clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) $XXXX$ $XXXX$

(4) $XXXX$ $XXXX$

6. In fact, in similar circumstances, a complaint was made to SSP Ludhiana and after holding inquiry, some information in the complaint was found to be false and the proceedings under Section 182 Cr.P.C. were ordered to be initiated by the SHO of the concerned police station and the kalendra under Section 182 Cr.P.C., was ordered to be quashed by this Court in the matter of **Babita Vs. State of Punjab and another 2008(4) R.C.R. (Criminal) 516** , and the relevant extract of the said judgment has been reproduced below:-

“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 of 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."

7. A similar controversy was examined by the Hon'ble Supreme Court in the matter of **State of U.P. Vs. Mata Bhikh and others, (1994) 4 SCC 95** and held as follows:-

"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."

*9. 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 (2) RCR (Criminal) 838: 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."

8. After due consideration of the matter, the rival contentions and the above referred judgments of this Court as well as the Hon'ble Supreme Court, there is no denying the fact that the kalendra in the present case has been presented by Inspector/SHO Police Station Sanour under his signatures. From the averments made in the present petition as well as from the admitted stand of the State

of Punjab, it is apparent that the complaint was addressed to the SSP Patiala. The said complaint was got investigated from the DSP, Headquarter, Patiala, i.e. Inquiry Officer and the allegations in the complaint were found to be false. However, in such an eventuality, only the SSP, Patiala, was competent to lodge the kalendra in view of the provisions mentioned in Section 195 Cr.P.C. The kalendra having been filed by an incompetent officer, it is liable to be quashed.

9. Sequally, the kalendra dated 02.08.2016 filed by the SHO, Police Station, Sanour, (Annexure P-4) and all subsequent proceedings arising therefrom are ordered to be quashed.

10. All pending applications, if any, are disposed off, accordingly.

16.08.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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