

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

Date of Decision:-10.03.2023

CRM-M-19175-2016

Kritika @ Preeti.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

AND

CRM-M-19326-2016

Neeraj Kumar.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Sherry K. Singla, Advocate for the Petitioner
(in both the cases).

Ms. Ramta Chowdhary, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

By this common order I shall dispose of both the
aforementioned petitions as the same Kalendra is impugned in these
petitions.

2. The prayer in both the aforementioned petitions under Section
482 Cr.PC is for quashing of Kalandra No.33 dated 11.02.2015 under
Section 182 IPC P.S. Islamabad, District Amritsar (Annexure P-1) and all
the subsequent proceedings emanating therefrom.

3. The brief facts of the case as emanating from the pleadings are that Kritika @ Preeti wife of Neeraj Kumar (petitioner in CRM-M-19175-2016) and Neeraj Kumar son of Dalip Kumar (petitioner in CRM-M-19326-2016) moved applications both dated 15.01.2014 (Annexure P-2 in both petitions) against 27.11.2013 against Loveneet Datta levelling allegations against him for abusing and giving threats to kill them (petitioners).

4. These applications were enquired into by the then incharge Police Post Gurbax Nagar, P.S. Islamabad, Amritsar and by the then Assistant Commissioner of Police Central, Amritsar. On the basis of the inquiry conducted by both the officers the allegations levelled by the petitioners in these applications were found to be false. Hence they were consigned to the office by the Commissioner of Police, Amritsar.

5. Feeling aggrieved by the harassment on account of these applications filed by the petitioners, the said Loveneet Dutta moved an application no.4871-PC-COP dated 08.12.2014 and 4872-PC-COP dated 08.12.2014 to the Commissioner of Police , Amritsar requesting therein to take legal action against the petitioners for moving applications by levelling false allegations against him. These applications were inquired into by the then SHO, P.S. Islamabad, Amritsar who recommended the taking of legal action under Section 182 IPC against the petitioners. These recommendations were forwarded by the ACP Central, Amritsar. Legal Opinion was also taken from DA (Legal) by the then Commissioner of Police, Amritsar who recommended initiation of proceedings under Section 182 IPC against the petitioners. Thereafter the Commissioner of Police further marked the case to the SHO, P.S. Islamabad, Amritsar vide letter No.325-PC-COP dated 31.01.2015 for taking necessary action thereupon.

Thereafter in pursuance of the order Commissioner of Police, Amritsar a Kalandra (criminal complaint) under Section 182 IPC was prepared by SHO P.S. Islamabad against the petitioners on 11.02.2015 and was produced before the Court on 12.02.2015. A copy of the Kalandra is attached as Annexure P-1.

Thereafter charges were framed on 4.9.2015 and examination in chief of the complainant was recorded.

6. The Counsel for the petitioners contends that complaint (Annexure P-2) was filed to the Commissioner of Police, Amritsar and the Kalandra had been filed by the SHO P.S. Islamabad, Amritsar. Therefore, in terms of Section 195 Cr.PC the proceedings arising out of the Kalandra (Annexure P-1) were liable to be quashed as the Kalandra in question could only be filed by the officer to whom the complaint had originally been made by the petitioners i.e. the Commissioner of Police. Certain other grounds have also been raised regarding limitation which are not required to be gone into.

7. The Counsel for the State while referring to the replies submitted in both these petitions contends that though the complaints had been filed by the petitioners to the Commissioner of Police, Amritsar, however, the inquiries on these complaint were entrusted to SHO P.S. Islamabad. After conducting a proper and thorough inquiry the SHO had recommended legal action under Section 182 IPC. This opinion of the SHO had been forwarded to the ACP Central, Amritsar. The Commissioner of Police also sought legal opinion from DA Legal who also recommended initiation of proceedings under Section 182 IPC. Thereafter the case was approved by the Commissioner of Police, Amritsar on 31.01.2016 who

himself further ordered the SHO P.S. Islamabad, Amritsar vide letter No.325-PC-COP dated 31.01.2015 for taking necessary action consequent to which the SHO filed the Kalandra in question. Since the Kalandra had been filed by the SHO on the instructions of the Commissioner of Police to whom the original complaint had been made by the petitioners, there was sufficient compliance of Section 195 Cr.PC and therefore, the proceedings were not liable to be quashed. Even otherwise, the charge had already been framed and the petitioners were at liberty to avail their legal remedies during the course of the Trial.

8. I have heard learned Counsel for the parties.

9. Before proceeding further it would be apposite to refer to the provisions of Section 195 Cr.PC and the same are reproduced herein below:-

“ 195. Prosecution for contempt of lawful authority of public, 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 Section 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, 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;

10. The Hon'ble Supreme Court in the case of ***P.D. Lakhani & Anr. Vs. State of Punjab & Anr. 2008(2) RCR (Criminal) 838*** held as under:-

“ 13. 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 authorise 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.

14. In *Daulat Ram Vs. State of Punjab* [(1962)2 SCR 812], *Hidayatullah, J.* (as the learned Judge then was), held as under :

"... 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 this case."

The said decision was followed by a Division Bench of this Court in ***State of U.P. Vs. Mata Bhikh & Ors.* [(1994)4 SCC 95]**, stating :

"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."

The said decisions are squarely applicable to the facts of the present case.

15. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. Appeal is allowed. However, there cannot be any doubt whatsoever that another complaint petition would be maintainable at the instance of the appropriate authority.

11. The aforementioned principle of law has been followed by the Hon'ble Supreme Court in ***Saloni Arora Vs. State of NCT of Delhi* Crl. Appeal No.64 of 2017 (Arising out of S.L.P. (Crl.) No.8184 of 2015) D/d**

10.01.2017 and this Court in the case of ***Karamjit Kaur Vs. State of Punjab***

2012(6) RCR (Criminal) 1799, Subash Chander Vs. State of Haryana
2010(3) RCR (Criminal) 308, Kulwinder Singh Vs. State of Punjab
2008(4) RCR (Criminal) 418, Dr. Sham Lal Thukral Vs. State of Punjab
2009(3) RCR (Criminal) 168.

12. In the present case as per the admitted facts, the petitioners are stated to have made a complaint against Loveneet Dutta to the Commissioner of Police, Amritsar. The said complaint was found to be false. Thereafter, on the complaint of Loveneet Dutta an inquiry was conducted pursuant to which the Kalandra under Section 182 IPC came to be filed at the instance of the SHO concerned. Thus, it is apparent that there has been a clear violation of the Section 195 Cr.PC as has been enumerated by the Hon'ble Supreme Court in ***P.D. Lakhani's case (supra) and Saloni Arora's case (supra)***. Since the complaints had been made by the petitioners to the Commissioner of Police he or someone superior to him could have filed the Kalandra under Section 182 IPC. The question of a subordinate being delegated the power to file it does not arise. Therefore, clearly, the present proceedings against the petitioners cannot be sustained.

13. In view of the above discussion, I find merit in both the aforementioned petitions. Therefore, the Kalandra No.33 dated 11.02.2015 under Section 182 IPC P.S. Islamabad, District Amritsar (Annexure P-1 in both petitions) and all consequential proceedings arising therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

March 10, 2023
Vinay

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