

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

CRM-M-18290-2017 (O&M)
Date of decision: 16.06.2023

Gulzar Singh and Others

....Petitioners

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. D.S. Gandhi, Advocate for the petitioners

Mr. M.S. Nagra, AAG Punjab

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of Kalendra dated 01.05.2015 (Annexure P-1), instituted by Station House Officer-respondent No.3, registered under Section 182 IPC, at Police Station Gharinda, District Amritsar.

2. The facts as emerge are that the petitioners had filed a complaint bearing No.2146-ADGP dated 15.10.2014 addressing to the Director General of Police-respondent No.2 against Hardev Singh son of Darshan Singh alleging his active involvement in business of sale of drugs at a very scale and that he and his brothers had purchased 4-5 acres of land with the money earned from the same, besides spending huge amount in his election as Sarpanch in the year 2013 and also in construction of two houses. Some time ago, one case of dacoity was also registered against the Sarpanch and his real brother-in-law (Jija), who was confined to jail. The said complaint was forwarded to Senior Superintendent of Police, Amritsar (Rural) for the verification of the alleged facts and submissions of a detailed report. The said complaint was got enquired by DSP, Sub Division Attari,

Amritsar (Rural) and found that the allegations levelled in the complaint were false. However, he recommended to take an action against the petitioners under Section 182 IPC. On that basis, Kalendra dated 01.05.2015 was filed by SHO, P.S. Gharinda, District Amritsar against them.

3. Learned counsel for the petitioners submitted that as per Section 195(1)(b)(i) Cr.P.C., with regard to the offence under Section 182 IPC, the Kalendra was required to be filed by the officer concerned or by officer senior to the one before whom the complaint was made, non-compliance whereof would render the proceedings *void ab initio*. Thus, the same filed by the SHO in the present case, when the complaint was made by the petitioners to the DGP, is not valid and liable to be quashed. He places reliance on the judgments passed by this Court in the case of **Malkiat Singh vs. State of Haryana**, 1998 SCC OnLine P&H 1443 and **Karam Singh vs. State of Haryana and Others**, 2008 (2) SCC 231.

4. Learned State counsel would submit that the Kalendra filed by the SHO was rightly presented as per the provision and the present petition may be dismissed.

5. Heard.

6. It would be worthwhile to make a reference to the provisions of Section 195 Cr.P.C., which reads thus:

“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) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.
- (4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate: Provided that-
- (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;
- (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

7. As is apparent, the petitioners had moved a complaint to the DGP against one Hardev Singh, which was marked to SSP, who further sought a report from DSP. Thereafter, the said officer submitted a report dated 09.04.2015 to the

office, stating therein that he had obtained a detailed report from the SHO-respondent No.3 and the allegations made in the complaint were found to be false. The basis of the Kalendra is the above conclusion arrived at.

8. It would be profitable to make a reference to the judgment of Hon'ble The Supreme Court in the case of **P.D. Lakhani v. State of Punjab**, 2008(2) RCR (Criminal) 838, wherein the maintainability of the Kalendra filed by the SHO under Section 182 IPC, who had investigated the complaint that had been addressed to the SSP, was considered. It was observed that under Section 195 Cr.P.C., a complaint could be filed by the SSP or a superior officer and not by the inferior officer. Whatever action was taken in the matter was pursuant to the orders of the Senior Superintendent of Police, Jalandhar, upon which, the search was made, is not in dispute. Section 195 contains a bar on the Magistrate to take cognizance of any offence, when a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction. In a case of this nature, representation, if any, for all intent and purport was made before the Senior Superintendent of Police and not before the Station House Officer. It was held that, "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 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.

14. In **Daulat Ram v. 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."

9. This Court in the case of **Kulwinder Singh vs. State of Punjab and another** 2008(4) RCR (Crl.) 418, quashed the Kalendra finding the SHO incompetent as the complaint had been made to the SSP and Deputy Inspector General of Police and held that in case the prosecution has to be launched under Section 182 IPC, the complaint in writing should be made by the public servant concern and not his subordinate and even a direction by competent authority to present Kalendra will not comply with the provision of law.

10. In **Malkiat Singh** (Supra), this Court, quashed the Kalendra while following the decision in *Krishna Tukaram Jadhav and another vs. The Secretary to the Chief Minister, Bombay State*, AIR 1955 Bombay 315, on the ground that the complaint disclosing cognizable offence under Section 302, 148, 149, 120B and 201 IPC was submitted to the Superintendent of Police, Kurukshetra, wherein the SHO carried out the investigation, it was held that no complaint under Section 182

IPC could be filed by the SHO, if the same was found to be false without registration of FIR. Similar view has been taken by this Court in the case of **Surjit Singh vs. State of Punjab**, CRM-60096-M-2004, decided on 06.02.2008, quashing the Kalendra presented by Assistant Sub Inspector, while the complaint by the petitioner had been filed to the SSP, holding it to be not valid in terms of provisions of Section 195(1)(iii) of Cr.P.C.

11. The enunciation of law elucidating the above provision makes it crystal clear that in the present case, since, the complaint was submitted to the DGP, who though got it enquired into by a subordinate officers, however, would not imply that the SHO, who was asked to submit a report by the DSP, had the authority to present the complaint under Section 182 IPC against the petitioners. Thus, the Kalendra dated 01.05.2015, Annexure P-1 is hereby quashed.

12. The present petition is allowed accordingly.

(AMAN CHAUDHARY)
JUDGE

16.06.2023
M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No