

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.226

Case No. : CRM-M-11277-2019

Date of Decision : May 11, 2023

Darshan Singh

.... Petitioner

vs.

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sunny K. Singla, Advocate
for the petitioner.

Ms. Himani Arora, AAG, Punjab
for the respondent-State.

* * *

GURBIR SINGH, J. :

1. Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing of Kalandra No.30 dated 11.11.2018, under Section 182 of IPC and Section 66 of Police Act, Police Station Maloud (Annexure P-1) and all other consequential proceedings emanating therefrom.

2. The brief facts giving rise to this petition are that a Kalandra dated 11.11.2018 (Annexure P-1) was presented against the petitioner on the allegations that complaint bearing No.61-DGP dated 18.05.2018 was sent by petitioner against Shamsher Singh son of Mewa Singh, Kuldeep Singh son of Shamsher Singh, Rajvir Singh son of Jasvir Singh, Amninder Singh son of Jasvir Singh, all residents of Pikhi Khatran, Police Station Payal (now Police Station Maloud), District Ludhiana and after inquiry from Superintendent of Police (Head Quarters), Khanna and after receiving the

opinion of Additional District Attorney (Legal), Khanna, proceedings under Section 182 of IPC and Section 66 of Police Act, against Darshan Singh, for giving false complaint, was marked to SHO Maloud by Senior Superintendent of Police, Khanna. The petitioner had levelled allegations in the said complaint that the reply, which was sent by Senior Superintendent of Police, Khanna, bearing letter No.729/P.C dated 11.04.2018, to the office of Director General of Police, Punjab, Chandigarh, was not correct. Rajbir Singh, Belt No.439/Ludhiana and Amninder Singh, Belt No.3/734 IRB were doing the duty under Senior Superintendent of Police, Khanna, whereas the court case was pending against both of them and both were appearing in the Court on each and every date of hearing. The petitioner also requested that the said letter be again re-considered. The inquiry was conducted by Superintendent of Police (Head Quarters), Khanna. A case bearing No.120 of 2011, under Sections 447, 430, 431, 379, 34 IPC, was registered at Police Station Payal against Shamsheer Singh etc. including Rajbir Singh and Amninder Singh. Accused Rajbir Singh moved an application for cancellation of the case. Inquiry was got conducted by SHO, Police Station Maloud and he recommended for cancellation of the case against him and the said cancellation report, on the recommendation of Deputy Superintendent of Police, was sent to Senior Superintendent of Police, Khanna but when presented before the Court for acceptance, the learned Judge directed to re-inquire the matter and case was again inquired by Superintendent of Police (I), Khanna and after inquiry, it was recommended to initiate proceedings under Sections 182 and 211 IPC against the petitioner, for getting the false case registered and it was recommended for

filing the cancellation report in the above said case. Accordingly, cancellation report was presented before the Court and the Kalandra bearing Rapat No.07 dated 04.08.2017 was prepared and was presented in the Court but petitioner was acquitted in the said Kalandra by Sub-Divisional Judicial Magistrate, Payal. The petitioner gave complaint No.3322/peshi dated 29.10.2013. Inquiry was got conducted and on the basis of inquiry report, same was ordered to be consigned to the record room. Complaint dated 20.06.2013 was inquired by SHO, Police Station Payal and on inquiry, no truth was found in the complaint and it was recommended to be consigned to record room. Complaint No.302/IVC dated 10.07.2017, filed by the petitioner, was inquired by Superintendent of Police (IG), Khanna and he also recommended to consign the complaint, vide report dated 10.08.2017. Complaint dated 28.06.2016 filed by petitioner was inquired by Deputy Superintendent of Police(I), Khanna and he also recommended for consigning the complaint to record room. Complaint No.92-IGC dated 17.03.2017 was filed by the petitioner and 241-peshi dated 15.02.2017 was inquired by Deputy Superintendent of Police (S), Khanna and he sent his report vide No.355/5A/reader dated 11.07.2017 to Senior Superintendent of Police, Khanna who ordered Superintendent of Police (Head Quarters) for comments. He, after inquiry, sent his report dated 28.12.2017. Complaint No.52-DGP dated 26.10.2017 was inquired by Superintendent of Police (Head Quarters), Khanna and said complaint, vide report No.1010/reader dated 28.12.2017, was consigned to the record room. Senior Superintendent of Police, Khanna sent the said report to the Commissioner of Police, Ludhiana who had written for initiating the proceedings under Section 66 of

Police Act against the petitioner. From the inquiry in the complaint, it was found that petitioner is in the habit of giving false complaints. Superintendent of Police (Head Quarters), Khanna, after receiving the opinion from Additional District Attorney (Legal), Khanna, ordered SHO of Police Station Maloud, for initiating suitable action against the petitioner. Senior Superintendent of Police, Khanna ordered to proceed under Section 182 of IPC and Section 66 of Police Act against the petitioner and accordingly Kalandra in question was filed.

3. Learned counsel for the petitioner has argued that Kalandra was presented by SHO of Police Station Maloud. The complaint was not made to him. The complaint was moved to Director General of Police, Punjab. The Kalandra could only be presented by the officer, to whom the complaint had been made. As per Section 195(1) of Cr.P.C., the Court could not take cognizance of the offence under Section 182 of IPC, except on the complaint in writing of the public servant or of some public servant, to whom he is administratively subordinate. It is further argued that petitioner has only requested for re-consideration of his application. Earlier also, a Kalandra was filed against the petitioner but learned Court discharged the petitioner vide order dated 20.04.2015 (Annexure P-4). The petitioner has been falsely implicated in the Kalandra without any basis. He has relied upon the cases of Subhash Chander vs. State of Haryana 2010(3) RCR (Criminal) 308, Dr. Sham Lal Thukral vs. State of Punjab 2009(3) RCR (Criminal) 168, P.D. Lakhani and another vs. State of Punjab and another 2008(2) RCR (Criminal) 838, D.S. Rawat vs. State of Punjab 2007(2) RCR (Criminal) 199, Vinod Kumar vs. State of Haryana 1999(3) RCR (Criminal) 323 and

Sharda Devi vs. State of Haryana 2018(2) RCR (Criminal) 54.

4. Learned counsel for the State has argued that petitioner has levelled false and baseless allegations against the officials of the department. Inquiry was conducted by the officers of the department and the allegations levelled by the petitioner were found to be false. The petitioner is in the habit of filing false complaints. Petitioner can prove his innocence before the learned trial Court. So, prayer for dismissal of the petition has been made.

5. I have heard the submissions of learned counsel for the petitioner and learned State counsel.

6. There is no denial of the fact that complaint dated 14.05.2018 (Annexure P-2) was sent to the Director General of Police, Punjab, Chandigarh. Kalandra (Annexure P-1) dated 11.11.2018 was filed by SHO of Police Station, Maloud under his signatures. The only question is whether complaint/Kalandra could be filed by the person, to whom the complaint was sent or by his junior officer including SHO of concerned Police Station. As per provisions of Section 195 Cr.P.C., the complaint/Kalandra under Section 182 IPC could be filed by the public servant concerned, which means, to whom the complaint was sent or by some other public servant, to whom he is administratively subordinate. In the case of **P.D. Lakhani** (*supra*), the complaint was sent to Senior Superintendent of Police, who sent the complaint to SHO. The SHO found the complaint false and filed the complaint under Section 182 IPC before the Magistrate against the complainant. It is held by Hon'ble Apex Court that no complaint could be lodged by SHO under Section 195 of Cr.P.C. Complaint could be filed either by the Senior Superintendent of Police or his superior officer and not by his

junior officer. In the case of Dr.Sham Lal Thukral (supra), the facts of the case are almost similar. It is held by this Court that filing of Kalandra under the signatures of SHO, when complaint was made to Senior Superintendent of Police, does not fulfill requirement of law. In all the authorities cited above by learned counsel for the petitioner, the proceedings were quashed on the ground that complaint was sent to higher authorities but Kalandra/complaint was filed by junior officers.

7. In the case in hand, the complaint was sent to Director General of Police, Punjab but Kalandra/complaint was filed by SHO, who was junior to him. Since Kalandra/complaint was neither filed by the officer, to whom it was sent nor by the officer, to whom he is administratively subordinate, so, the Kalandra/complaint was itself not maintainable. So, continuation of proceedings on such Kalandra/complaint are abuse of process of law.

8. As a sequel of the above discussion, the Kalandra (Annexure P-1) and all the other proceedings emanating therefrom are hereby quashed. Petition is accordingly allowed.

9. Pending applications, if any, shall stand disposed of along with this judgment.

May 11, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.