

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

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2023:PHHC:115419

CRM-M-24917-2015 (O&M)

Date of decision: August 31st, 2023

Dalip Kumar Sareen

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Yogesh Goel, Mr. Satyam
and Mr. Manav Singal Advocates
for the petitioner.

Mr. Inderpal Singh Sabharwal, Deputy Advocate General,
Punjab.

MANJARI NEHRU KAUL, J.

The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of The Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') for quashing of the complaint under Section 182 of The Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') along with all consequent proceedings arising therefrom, being not only gross abuse of the process of law but also arbitrary and illegal.

2. Before proceeding further, it would be pertinent to give a brief sequence of events leading to the filing of the complaint dated 17.09.2004 in question, which has been annexed as Annexure P-1. Initially, the petitioner moved an application dated 28.09.2023 (Annexure P-2) to the police, wherein it was alleged that one Krishan Lal Kochar, a practicing Advocate in the District Courts at Ludhiana, had been extending threats to him. The alleged threats were related to the Court appearances of the petitioner and some lawyers in

some cases against said Krishan Lal Kochar. As per allegations levelled by the petitioner, on 27.04.2003, while he along with one Ajay Chopra was walking home, Krishan Lal Kochar accompanied by his sons and two unidentified persons, not only verbally abused and threatened the petitioner, but also physically assaulted him. As a result of which the petitioner sustained various injuries on his person. Allegedly, during the aforementioned altercation, the mobile phone of the petitioner was taken away by Krishan Lal Kochar and others, and the petitioner was warned that in case he continued to appear against them in Court cases, it would entail serious consequences. In the complaint, the petitioner, thus, requested for registration of a criminal case against Krishan Lal Kochar and others. The complaint was marked to one ASI Rajwant Singh for investigation. However, since ASI Rajwant Singh suffered a heart attack, no progress was made on his complaint. Subsequently, Krishan Lal Kochar filed an application on 11.06.2004 (Annexure P-3), before the police for initiating action against the petitioner under Section 182 of the IPC for levelling false allegations against him in his complaint, Annexure P-2. The said application was forwarded to the Deputy Superintendent of Police, Ludhiana, who then recommended action against the petitioner on the basis of the averments made by Krishan Lal Kochar in his application. The recommendation of the Deputy Superintendent of Police, Ludhiana, led to the submission of a report dated 12.08.2004 (Annexure P-4), pursuant to which the Station House Officer, Police Station Model Town, Ludhiana, then filed the complaint in question before the Judicial Magistrate, Ludhiana, seeking initiation of proceedings against the petitioner under Section 182 of the IPC on the basis of the report annexed as Annexure P-1. Resultantly,

legal proceedings were initiated against the petitioner under Section 182 of the IPC based on the complaint annexed as Annexure P-3.

3. Learned counsel for the petitioner has challenged the initiation of the proceedings under Section 182 of the IPC, *inter alia*, on the following grounds:-

(i) That the pre-requisites for initiation of proceedings under Section 182 of the IPC were clearly amiss in the case in hand. It was a matter of record that application dated 28.09.2003 (Annexure P-2) filed by the petitioner against Krishan Lal Kochar and others remained pending as admittedly no investigation much less any inquiry was carried out with respect to the allegations levelled therein, which fact found due corroboration from the statements given by the Investigating Officer concerned and the SHO, before the Deputy Superintendent of Police, Ludhiana (Inquiry Officer). Hence, the key ingredients to attract the mischief of an offence under Section 182 of the IPC were not made out, which in turn also rendered the charges framed under the said Section untenable.

(ii) That application dated 11.06.2004 (Annexure P-3) moved by Krishan Lal Kochar to the police authorities could not have been the basis for initiation of proceedings under Section 182 of the IPC as proceedings under Section 182 of the IPC cannot be initiated on a private complaint but the power to initiate any action vests only with the police.

(iii) That even otherwise a perusal of the inquiry report dated 12.08.2004 (Annexure P-4) made it abundantly clear that at no point of time, the petitioner was joined in the inquiry conducted by the DSP, Ludhiana, and hence, it was obvious that a one sided narrative of

Krishan Lal Kochar had been brought forth and believed by the Inquiry Officer. Therefore, in above circumstances, all proceedings emanating thereafter would be *non est* and deserved to be set aside.

In support of his submissions, learned counsel has placed reliance upon judgment of the Hon'ble Supreme Court in *State of Punjab Versus Dvainer Pal Singh Bhullar and others 2012 (1) R.C.R. (Criminal) 126* as also the judgments of this Court in *Davinder Versus State of Haryana 1998 (2) R.C.R. (Criminal) 782* and *Malkiat Singh Versus State of Haryana 1992 (2) R.C.R. (Criminal) 10*.

4. *Per contra*, learned State counsel while opposing the submissions made by learned counsel opposite, has not been able to controvert that the complaint dated 28.09.2003 (Annexure P-2) moved by the petitioner was never inquired into. He, however, submits that an investigation was indeed carried out by the then D.S.P., Sarabha Nagar, Ludhiana, pursuant to receipt of application dated 11.06.2004 (Annexure P-3) submitted by Krishan Lal Kochar, during which the allegations levelled by the petitioner in his complaint dated 28.09.2003 (Annexure P-2) were found to be false. Learned State counsel has further submitted that during the inquiry by the D.S.P., Sarabha Nagar, Ludhiana, it had also come to light that a criminal case had been registered against the petitioner and others for various offences under the Indian Penal Code at Police Station Model Town, Ludhiana. Learned State counsel has thus, argued that it was evident that the petitioner had filed complaint dated 28.09.2003 (Annexure P-2) just to pressurize Krishan Lal Kochar, who had been pursuing a criminal case against him. He has further submitted that after the D.S.P., Sarabha Nagar, Ludhiana recommended initiation of legal proceedings

against the petitioner, the complaint in question under Section 182 IPC was registered at Police Station Model Town, Ludhiana, and now the matter was posted before the trial Court for prosecution evidence.

5. I have heard learned counsel for the parties and perused the allegations levelled against the petitioner in the FIR in question.

6. Before proceeding further, it would be apposite to reproduce the provisions of Section 182 of the IPC:-

“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.”

7. Thus, what flows from the above reproduced provisions of law is that in order to attract the mischief of an offence under Section 182 of the IPC, the investigating agency must be able to show that the accused knowingly gave a false information. Thus, before instituting criminal proceedings under Section 182 of the IPC, the investigating agency must duly inquire into the veracity of the information given by the accused. In the instant case, it is not disputed that the petitioner had

moved an application dated 28.09.2003 (Annexure P-2). Admittedly and as not also disputed by learned State counsel, the complaint which had been moved by the petitioner against Krishan Lal Kochar remained pending as the concerned police official had taken ill. Hence, the authenticity or otherwise of the allegations levelled in the complaint against Krishan Lal Kochar were never inquired into by the police. On the other hand, Krishan Lal Kochar moved an application dated 11.06.2004 (Annexure P-3) before the police, wherein he alleged that the petitioner had levelled false allegations against him in the complaint dated 28.09.2003 (Annexure P-2). Strangely, without any inquiry being conducted on the complaint moved by the petitioner and only on the basis of the averments made by Krishan Lal Kochar in his complaint (Annexure P-3), the D.S.P. concluded that the allegations levelled in complaint dated 28.09.2003 (Annexure P-2) were false, thus warranting initiation of proceedings under Section 182 of the IPC against the petitioner. It has also not been disputed by the State counsel that the petitioner was never joined or involved in the investigation, which was carried out by the D.S.P. pursuant to which he submitted report dated 12.08.2004 (Annexure P-4) leading to the registration of the case under Section 182 of the IPC against the petitioner. This Court, therefore, has no hesitation in observing that the procedure adopted by the D.S.P. while recommending initiation of criminal proceedings under Section 182 of the IPC was patently illegal being in blatant contravention of the provisions of law. Once the petitioner was not joined in the inquiry conducted by the D.S.P., a question mark would indeed arise qua the accuracy of the investigation report, as it not only was based on a one sided narrative but that too on the basis of a private complaint made by

Krishan Lal Kochar.

8. The prayer of the learned State counsel for dismissal of the instant petition since the proceedings before the trial Court were at an advance stage as the case was posted for prosecution evidence, would be inconsequential. Once the initial order recommending initiation of proceedings under Section 182 of the IPC was bad in law, all further proceedings emanating therefrom, without doubt, would be *non est*.
9. As a sequel to the above, the instant petition is allowed and the complaint filed under Section 182 of the IPC against the petitioner stands quashed.

August 31st, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No