

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-38827-2017 (O & M)

Date of decision: 08.02.2023

Mahipal Yadav

..... Petitioner

V/s

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Harshvardhan Raja, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Anil Kumar Rana, Advocate,
for the respondent.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for the quashing of *Kalandra* dated 13.07.2016 under Section 182 IPC (Annexure P-2) and the summoning order/notice dated 27.07.2016 passed/issued in case No.109 dated 27.07.2016 by the Additional Chief Judicial Magistrate, Faridabad against the petitioner (Annexure P-3) and subsequent proceedings arising therefrom.

2. The brief facts as emanating from the pleadings are that the petitioner on the night intervening 28/29.06.2016 made a telephonic call to the police that a theft had taken place at his residence. After receiving this information, ASI Kuldeep Singh alongwith other police personnel reached the spot and carried out an inspection of the same. The finger-print expert and crime team also reached at the place of the occurrence. However, on

asked to give in writing his complaint. He, however, stated that he would submit the same in the police station. Thereafter, the complainant came to the police station making a complaint against 27 persons of village Sarai Khawaja contending that they had committed theft at his residence and had decamped with gold ornaments of about 18 tolas, 3 kilos of silver and Rs. 70,000/- cash lying in the almirah by breaking the lock of the same. They had also taken away his mobile phone make Samsung Galaxy bearing No.9810747758. Certain photographs of the crime scene (AnnexureP-4) were also taken. A copy of the DDR No.27 dated 29.06.2016 is attached as Annexure P-1 to the present petition.

3. The verification of the complaint was done by the ASI concerned and during investigation, the statements of the alleged accused and respectables of village Sarai Khawaja were recorded. They stated that the petitioner-Mahipal submitted false applications against a number of persons and would take money in the name of compromise. He, thus, committed extortion as against other persons even if they were simply raising construction in their own house. A few days prior to this occurrence, he had submitted a complaint against 5/7 old ladies of Sarai Khawaja for indulging in the business of prostitution. Later on, he denied making any such complaint. Similarly, he had given false complaints against the officials of Government office, school and officials of Electricity Department. As he was not gainfully employed, he earned his livelihood by making complaints and extorting money. The respectables also got recorded their statements to the effect that an enquiry be conducted as to from where the petitioner was able to muster so much cash and jewelry allegedly stolen

theft in an upper room of his house and it was not possible that so many persons could have entered the same. It was also found during enquiry that the room in question and the iron almirah were lying open and no lock of the almirah was found to be broken. This ran counter to his allegations that theft had been committed after breaking open the lock of the almirah. A detail of various complaints submitted by the petitioner-Mahipal was provided too. They had been enquired into at the highest level and had been found to be false. It was also found that the petitioner-Mahipal was involved in other cases and that his Arms Licence had been cancelled. The SHO, therefore, found during the course of his enquiry that no theft of jewelry or cash had taken place and the complaint has been instituted to defame and harass the respectable persons with an intention to involve them in a false case. He thereby had committed an offence punishable under Section 182 IPC. A copy of the *Kalandra* pursuant to the enquiry is attached as Annexure P-2.

4. Based on the aforementioned *Kalandra*, a notice/summoning order was issued on 27.07.2016 (Annexure P-3).

5. The *Kalandra*, the summoning order (Annexures P-2 and P-3 respectively) and all subsequent proceedings are sought to be quashed vide the present petition.

6. The primary contention raised in the petition is that in the absence of the FIR, no *Kalandra* under Section 182 IPC could have been instituted and secondly that the summoning order was a non-speaking one and was liable to be quashed.

7. The State has filed a reply to the present petition by way of an affidavit of Yashpal Singh, HPS, Assistant Commissioner of Police, Sarai,

Kalandra. It is stated that the petitioner was a chronic complainant and all his complaints had been found to be false after having been verified at the highest level. The present case was an example of one such complaint having been found false leading to the initiation of proceedings under Section 182 IPC.

8. The learned counsel for the petitioner while referring to the contents of the petition states that firstly, the complaint in question ought to have been fructified into an FIR in terms of the judgment in “*Lalita Kumari versus Govt. of U.P. and others, 2014(1) SCC(Cri.) 524*”. Secondly, as an FIR had not been registered, no proceedings under Section 182 IPC could have been initiated against the petitioner. Thirdly, it is his contention that the summoning order is cryptic and shows non-application of mind and is liable to be quashed.

9. The learned counsel for the State, on the other hand, submits that there is no requirement for the registration of any FIR at the instance of the petitioner/complainant prior to the initiation of proceedings under Section 182 IPC against the original complainant (the petitioner in the present case). Since a formal notice alone was issued, no reasoned order is required to be passed by the Court on the *Kalandra*. The conduct of the petitioner in making multiple complaints to different authorities regarding different accused needs to be deprecated. In fact, as the petitioner was a habitual and chronic complainant, he deserves no sympathy and ought to face proceedings as initiated against him.

10. The learned counsel for the accused in the original complaint, has supported the case of the respondent-State and contends that the

182 IPC have rightly been initiated and no reasoned summoning order is required to be passed.

11. I have heard the learned counsel for the parties.

12. Before proceeding further, it would be apposite to refer to the provisions of Section 182 IPC. The same are reproduced hereinbelow:-

"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."

13. The two issues raised in the present petition have been considered and dealt with in a judgment of this Court passed in 'Varinder Mohan versus State of Punjab and another, 2009(3) RCR (Criminal) 100'.

The relevant extract of the judgment is reproduced hereinbelow:-

3. Two-fold submissions have been raised by the petitioner in the present petition. Firstly, in the present case, no FIR was lodged, therefore, in view of the ratio of law laid down in Malkiat Singh v. State of Haryana, 1999(2) RCR (Criminal) 10, no offence under Section 182 IPC is made out. First submission raised merit attention and is required to be dealt with by this Court. It has been stated that until and unless, FIR is recorded, it cannot be said that a false report was submitted to

police official. By mere lodging of DDR, police had not proceeded to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting such information are given or lawful power of such public servant has been used to the injury or annoyance of any such person. Section 182 IPC read as under:-

"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."

A perusal and dissection of the section reveal two essential ingredients that by such information furnished, public servant ought to have done or omitted to have done something relying upon such information or had used his lawful power to the injury or annoyance of any such person. In the present case, none of these two essential ingredients were followed. MHC Sukhwinder Pal had given a note that there is no negligence on the part of any person. The accident occurred suddenly and naturally and no offence against any body is made out. Therefore, the information given was neither acted upon nor something which ought to have been done by the police official was not done. Therefore, there was no omission on the part of police official. Non registration of the case has not caused injury or annoyance to any person but at the same time giving of a false

information to the police cannot be ignored. Therefore, Code of Criminal Procedure has taken care of this eventuality also. There are other penal provisions which take care of act of commission or omission on the part of the accused. Lodging of false information for obtaining insurance claim will constitute which offence require application of mind. The offence may not fall under Section 182 IPC.

4. The judgment relied upon by counsel for the petitioner in Malkiat Singh's case (supra) cannot be applied in each and every case as a matter of rule. It is not necessary that any information recorded in Daily Diary Report must be converted into FIR for proceeding against the person who has given information for offence under Section 182 IPC. Wherein in a Daily Diary Report, a note is appended that the matter is to be investigated or report of Chemical Examiner or Forensic Expert is awaited and thereafter action shall be initiated, in that case police officer had formulated an opinion to proceed with the case, therefore, ingredients of Section 182 IPC is complete. There can be many instances, same cannot be specified and put in water tight jackets. Therefore, in each and every case before summoning, Magistrate had to apply mind whether offence under Section 182 IPC is made out or not. Magistrate may not give reasons for the same. An observation by the Magistrate "Record perused. Prima facie offence is made out" will suffice.

5. Secondly, it has been stated by the petitioner in the petition that order dated 29.7.2005 passed by the Judicial Magistrate Ist Class, Jalandhar reproduced earlier, lack application of mind and the same has been passed in a mechanical manner. I find merit in this contention also. A Division Bench of this Court in Krishan Murari and ors. v. Mohinder Pal, 1983(1) RCR (Criminal) 21 held that it is not necessary that summoning order should be speaking order. However, it must reflect application of mind. A perusal of summoning order reveal that not

only the same is cryptic but it cannot be comprehended that the Magistrate was alive to the issues involved. Merely two lines have been noticed "Kalandra presented. It be registered and notice be issued." On this score also summoning order, Annexure P-2 is liable to be set aside. Accordingly, the present petition is accepted. Summoning order, Annexure P-2 is set aside. The matter is remanded back to the Court of Judicial Magistrate Ist Class, Jalandhar who shall apply mind to the submissions made and dealt with by this Court.

14. A perusal of the aforementioned judgment would show that there is no requirement for the registration of the FIR at the instance of the original complainant prior to the initiation of the proceedings under Section 182 IPC. A reading of the Kalandra would reveal that the petitioner is a chronic and habitual complainant and uses his complaints for blackmail and extortion.

15. However, it is equally true that the summoning order must show some application of mind as to whether an offence under Section 182 IPC is made out or not. Of course, it is not necessary that it should be a speaking order. In the present case, the summoning order (AnnexureP-3) reads as under:-

"Calandra under Section 182 IPC has been filed. An application has also been moved by the complainant seeking personal exemption. Considering the nature of duties attached with the post of complainant, the application is allowed and the present appearance of complainant is exempted till further orders. Now notice of the Calandra be issued to accused for 02.09.2016"

16. In Malkiat Singh (supra), a somewhat similar summoning order/notice was issued passed and it was quashed by this Court and the case was remanded back for a fresh adjudication on merits.
17. In view of the above, the notice/summoning order (Annexure P-3) alone is quashed. The ACJM, Faridabad is directed to pass a fresh order in the light of the observations made in Malkiat Singh (supra) and in this case within two weeks from the date of receipt of a copy of this order.
18. Disposed of in the aforesaid terms.

(JASJIT SINGH BEDI)

JUDGE

Februry 08, 2023

sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No