

CRM-M-44329-2016
CRM-M-35348-2016

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

201

CRM-M-44329-2016
Decided on : 17.02.2023

Bhagwant Kishore

. . . Petitioner

Versus

State of Punjab and another

. . . Respondents

AND

CRM-M-35348-2016

Sachin Puri

. . . Petitioner

Versus

State of Punjab and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

PRESENT: Mr. P. S. Ahluwalia, Advocate for the petitioners

Mr. Manipal Singh Atwal, DAG, Punjab

Mr. Lalit Pathak, Advocate for respondent No. 3

AMAN CHAUDHARY, J.

Present petition has been filed for quashing of Kalendra dated 03.09.2016, Annexure P-1, under Sections 182 and 211 IPC, instituted by Station House Officer-respondent No. 2 and summoning order dated 12.09.2016, Annexure P-2, passed by Judicial Magistrate, 1st Class, Dasuya.

Briefly put, FIR was lodged by petitioner-Bhagwant Kishore, who was running a ration depot that on 04.08.2010, at about 2:15 p.m., when he was sitting in his shop, Mohan Lal Thaman alongwith his two sons, Ajay Thaman and Amit Thaman @ Rinku entered his shop. Ajay Thaman exhorted, upon which a bullet was fired from the revolver by Mohan Lal

Thaman, in the stomach of complainant-Bhagwant Kishore. After investigation, challan was presented only against Mohan Lal Thaman. However, on an application filed by the prosecution under Section 319 Cr.P.C., Ajay Thaman and Amit Thaman @ Rinku were also summoned vide order dated 21.09.2012, which was made subject matter of CRR-3346-2012, before this Court. The same was dismissed as withdrawn qua Ajay Thaman, but allowed in favour of Amit Thaman @ Rinku. Consequently, both Mohan Lal and Ajay Thaman faced the trial, but only Mohan Lal Thaman was convicted for offences under Sections 307 and 452 IPC and Section 30 of the Arms Act.

On a complaint No.SSP, Hoshiarpur, 4020, dated 26.08.2016, submitted by Amit Thaman, the SHO, Police Station, Gardhiwala prepared and presented a Kalendra in question, for having got registered a false case against Amit Thaman @ Rinku, wherein the petitioners were summoned.

Learned counsel for the petitioners would contend that as per the provision of Section 195 Cr.P.C., with regard to the offence under Section 211 IPC, the complaint was required to be submitted in writing by the Court or the officer of the Court and not by the SHO, non-compliance whereof would render the proceedings *void ab initio*. He places reliance on the judgments of Hon'ble The Supreme Court in **C. Muniappan and others vs. State of Tamil Nadu**, 2010 (4) R.C.R. (Criminal) 268, and of this Court in **Jiwan Kumar vs. State of Punjab and others**, 2009 (1) RCR (Criminal) 415.

Learned counsel would next contend that since the maximum punishment prescribed for an offence under Section 182 IPC is 6 months, the trial Court has committed error in taking cognizance after more than three years, there being a bar of one year imposed under Section 468 Cr.P.C.

Heard the learned counsel for the parties.

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.”

The procedure to be followed for the offences mentioned in

Section 195 Cr.P.C., prescribed under Section 340 Cr.P.C., reads thus:

“340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it

necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section," Court" has the same meaning as in section 195."

It would be profitable to make a reference to the judgment of

Hon'ble The Supreme Court in the case of **Babita Lila and another vs.**

Union of India, 2016(4) RCR (Criminal) 246, wherein it was held thus:

“39. Noticeably in course of the adjudication, it was marked that Section 195 was an exception to an ordinary rule that any person could make a complaint in respect of commission of an offence triable under the Code. The restrictive mandate of this provision of the Code against cognizance of any offence punishable under the sections mentioned therein, when those pertain to any proceedings in any court, except on the complaint in writing of such court or of some other court to which such court is subordinate, was underlined in particular. This Court, thus emphasised that in the matter of invocation of Section 195(1)(b) of the Code, vis-a-vis a complaint about any of the offences as mentioned therein, an exception to the ordinary rule of making complaint by any person has been carved out and by way of a safeguard, only the court in the proceeding before which such offence had been committed or such officer of the Court as it may authorize in writing or some other court to which to this Court is subordinate, has been legislatively identified as competent to do so.

41. Section 195(1)(b) of the Code, which is relevant for the instant pursuit, prohibits taking of cognizance by a court vis-a-vis the offences mentioned in the three clauses (i), (ii) and (iii) except on a complaint in writing of the Court when the offence(s) is/are alleged to have been committed in or in relation to any proceeding before it or in respect of a document produced or given in evidence in such a proceeding or by such officer of that court as it may authorise in writing or by some other court to which the court (in the proceedings before which the offence(s) has been committed is subordinate. A patently regulatory imposition in the matter of lodging of a complaint for such offences is discernible assuredly to obviate frivolous and wanton complaints by all and sundry.

47. There is thus no escape from the proposition that for a valid complaint under Section 195 of the Code, the mandate thereof has to be essentially abided and as is easily perceivable this is to prevent frivolous, speculative and unscrupulous allegations relating to judicial proceedings in any court, lest the process of law is abused and public time is wasted in avoidable litigation.”

Hon’ble The Supreme Court in the case of **Sachida Nand Singh & Anr. vs. State of Bihar & Anr.**, (1998) 2 SCC 493, held that, “Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a complaint to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise.”

In **C. Muniappan & Ors** (supra) it was held that the provisions of Section 195 Cr.P.C. are mandatory and non-compliance thereof would vitiate the prosecution and all other consequential orders. The relevant paras to the present case reads thus:

“24. [In Daulat Ram v. State of Punjab](#), AIR 1962 SC 1206, this Court considered the nature of the provisions of [Section 195](#) Cr.PC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under :

"The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside." (Emphasis added)

25. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.”

Reverting to the facts of the case in hand, the Kalendra filed under Section 211 IPC contains the allegations of getting registered false case against Amit Thaman @ Rinku by mis-statement and repeatedly giving false complaints and had wasted the time of Government by giving false witness in Court.

It is abundantly clear from the language employed in the provision as elucidated above, that there is a legal bar to any Court taking cognizance of offences punishable under Sections 193 to 196 IPC (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 except on a complaint in writing, of that Court or by such officer of the Court as may be authorised in that behalf, or by some other Court to which that Court is subordinate. Section 211 of IPC deals with an offence of instituting or causing to be instituted any criminal proceeding or falsely charging any person of having committed an offence even when there is no just or lawful ground for such proceeding to the knowledge of the person instituting or causing the institution of the criminal proceedings. The initiation of the proceedings in the complaint for the offence alleged under Section 211 IPC at the hands of the SHO are clearly in teeth of the mandatory provisions and the exposition of law.

Insofar as the submissions of learned counsel for the petitioners regarding the Kalendra under Section 182 IPC, being barred as per Section 468 Cr.P.C., is concerned, it would be apposite to refer to said provision, which reads thus:

“468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation in relation to offences which may be tried

together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as”

It is pertinent to notice the fact that Amit Thaman @ Rinku, the false implication of whom is the basis of the Kalendra, on having been declared innocent by the Investigating agency, was summoned on an application filed under Section 319 Cr.P.C. vide order dated 21.09.2012 but the same was set aside by this Court vide order dated 27.08.2013, by allowing his revision, whereas the Kalendra under Section 182 IPC was prepared and presented by the SHO against the petitioners on 03.09.2016, whereupon they were summoned by the trial Court vide order dated 12.09.2016. The punishment for offence under Section 182 IPC being upto six months, thus, as per Section 468 Cr.P.C. the period up to which the cognizance could have been taken by the Court is one year. On being tested on the anvil of the aforesaid facts and the provision, the Kalendra, having been presented after more than three years, was barred. This Court quashed the Kalendra by holding that it to be barred by limitation, in a case wherein the police after inquiry found the FIR to be false and cancellation report was filed in the Court on 15.04.2001 but the Kalendra under Section 182 IPC was prepared and filed in the Court on 12.08.2003. [see **Gammi @ Gama vs. State of Punjab and another**, 2009(2) Recent Criminal Reports (Criminal) 1, followed in **Ajeet Singh and Anr. vs. State of Punjab**, Criminal Misc. No. M-17700 of 2009, decided on 06.11.2009]

A conspectus evaluation of the legal and factual aspects involved in the case, leads this Court to an inescapable conclusion that Kalendra deserves to be quashed.

As a sequel, the present petitions deserve to be allowed. The Kalendra, dated 03.09.2016, Annexure P-1 and summoning order dated 12.09.2016, Annexure P-2, are hereby quashed.

A photocopy of this order be placed on the file of another connected case.

(AMAN CHAUDHARY)
JUDGE

17.02.2023
Mehak

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