

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

**CRM-M No. 38072 of 2022
Date of Decision: 11.08.2023**

Arjun Rana @Arjun Chauhan

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Manoj Pundir, Advocate with
Mr. Aditya Partap Singh, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, DAG, Haryana.

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SANJIV BERRY, J. (ORAL)

The instant petition has been preferred under Section 482 of the Code of Criminal Procedure seeking quashing of Kalandra/DDE No.38 dated 20.09.2021 under Section 182 IPC(CHI/1407/2021, dated 22.10.2021) registered at Police Station City Yamuna Nagar, District Yamuna Nagar (Annexure P-1) and all other proceedings emanating therefrom.

2. Briefly, the facts of the case are that a Kalandra under Section 182 IPC dated 20.09.2021 (Annexure P-1) was presented against the petitioner on the allegations that complaint No.8184 dated 17.08.2021 (Annexure P-4) was filed by the petitioner against Nitin Kapur S/o Raj Kapur, resident of Chota Model Town, District Yamuna Nagar wherein he

alleged that on 12.08.2021 at around 12:34 P.M. the accused had called on the mobile phone of the petitioner proclaiming him to be District Vice President of BJP, Yamuna Nagar, asking him as to how the petitioner and other farmers had raised slogans against him and his party. It is relied that during conversation, said Nitin Kapur had used filthy and threatening language against the petitioner, as such the complaint was moved to the Superintendent of Police, Yamuna Nagar for taking action as per law. During inquiry of the same by DSP Yamuna Nagar, it was found that the complaint is false and in this regard the DSP Yamuna Nagar submitted his report dated 26.08.2021 (Annexure P-3), which was duly seen by Superintendent of Police, Yamuna Nagar on 01.09.2021. Thereafter, Kalandra /DDE No.38 dated 20.09.2021 (Annexure P-1) under Section 182 IPC was presented by the SHO PS City, Yamuna Nagar against the petitioner, which has been challenged by the petitioner by way of present petition under Section 482 Cr.P.C.

3. On issuance of notice of motion, petition has been contested by the State.

4. Arguments heard.

5. It is contended by learned counsel for the petitioner that the petitioner had preferred a lawful complaint to Superintendent of Police, Yamuna Nagar (Annexure P-4) which was inquired by DSP, Yamuna Nagar and was reported to be false and thereafter the Kalandra/DDE No.38 dated 20.09.2021 under Section 182 IPC was moved by the SHO Police Station City, Yamuna Nagar against the petitioner. He submits that as per Section 195 Cr.P.C this Kalandra could have either been filed by Superintendent of

Police, Yamuna Nagar to whom the complaint was preferred or his superior officer. He submits that the impugned Kalandra is nothing but abuse of process of law, which is not sustainable in the eyes of law and as such the same is liable to be set aside. In support of his contention counsel for the petitioner has referred to the judgments cited as *P.D. Lakhani & Anr Vs. State of Punjab & Another 2008(2) RCR (Criminal) 838; Dr. Sham Lal Thukral Vs. State of Punjab 2009(3) RCR Criminal 168; CRM-M-9195 of 2008, titled as Balwinder Kaur vs. State of Punjab and Ors, Law Finder Doc Id#362787; CRM-M-19175 of 2016 titled as Kritika @ Preeti vs. State of Punjab; CRM-M-11277 of 2019 titled as Darshan Singh vs. State of Punjab; and CRM-M-15976 of 2021 titled as Inderjit Dhamija vs. State of Haryana.*

6. Per contra, learned counsel for the State has argued that the impugned Kalandra has been initiated against the petitioner under Section 182 IPC for supplying wrong information to the Police. He submits that false and baseless allegations had been levelled by the complainant, which on inquiry found to be false and the Kalandra had been filed by the SHO under directions of the superior officers, as such there is no merit in the petition and the same deserves to be dismissed.

7. After considering the rival contentions and perusing the judgments referred in the light of the facts and circumstances of the present case, it transpires that the factum of the petitioner initiated the complaint (Annexure P-4) to Superintendent of Police, Yamuna Nagar on 17.08.2021 is concerned, the same is not disputed. It is also admitted fact that on inquiry there in, the DSP, Yamuna Nagar had found complaint to be false. It

is also fact that the proceedings vide the present Kalandra, initiated under Section 182 IPC, has been presented by SHO, PS City, Yamuna Nagar. In the backdrop of these facts, the petitioner has challenged the Kalandra by proclaiming the same not being preferred by the authority to whom the complaint was preferred or his superior officer and as such the same is not sustainable in the eyes of law and hence liable to be set aside.

8. In this regard reference is made to Section 195 Cr.P.C which reproduced as under:-

“195. Prosecution for contempt of lawful authority of public, for offences against the public justice and for offences relating to documents given in evidence. (1) No court shall take cognizance-
(a)(i) of any offence punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, 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;

9. Before proceeding further, it would be appropriate to have a glance on Provisions under Section 182 IPC which reads 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, with both.”

10. As stated above, it is admitted fact that in the present case the complaint was addressed to Superintendent of Police, Yamuna Nagar, however, the impugned Kalandra/complaint was filed by SHO PS City, Yamuna Nagar who is subordinate to him.

11. In the case of **P.D. Lakhani's case (supra)** the Hon'ble Apex Court, while discussing the applicability of Section 195 Cr.P.C. has categorically held that in a case where the criminal complaint is made to the Superintendent of Police who sent the same to the SHO and the SHO found the complaint to be false and filed a complaint under Section 182 IPC before the magistrate against the complainant, in such a circumstance the said complaint is liable to be dismissed as no complaint could be lodged by the SHO. It has been held therein that under Section 195 Cr.P.C. the complaint could be filed either by the Superintendent of Police or an officer superior to him and not by an inferior officer. Reliance has also been placed on the judgment of Hon'ble Supreme Court in ***State of U.P vs. Mata Bhikh and others, (1994) 4, SCC 95.***

12. Further, in the case of *Dr. Sham Lal Thukral's* case (supra) it has been held by this Court that when the complaint was made to the Senior Superintendent of Police, then filing of Kalandra under the signatures of the SHO, does not fulfill the requirement of law. Similar view have been taken by this Court in catena of other judgments including the judgments referred to above which could not controverted by the learned State counsel.

13. Applying the principles laid down in the judgments supra to the facts and circumstances of the present case, admittedly, in the present case the complaint was preferred by the petitioner to the Superintendent of Police Yamuna Nagar (Annexure P-4) which was entrusted to DSP, Yamuna Nagar who inquired into the same and found the complaint to be false. Thereafter, the SHO PS City, Yamuna Nagar has lodged the impugned Kalandra under Section 182 IPC before the Magistrate. In these circumstances, the impugned Kalandra/complaint was neither filed by the officer, before whom it was preferred nor by the officer, administratively superior to him, so, the Kalandra/complaint itself is not maintainable being a clear violation of the provisions contained in Section 195 Cr.P.C. The Superintendent of Police or any officer superior to him could have filed the Kalandra under Section 182 IPC. So, continuation of proceedings on such Kalandra/complaint is sheer abuse of process of law and cannot be allowed to be continued being unsustainable in the eyes of law.

14. Consequently, in the light of the above discussion, finding merits in the present petition the same is hereby allowed and the impugned Kalandra/DDE No.38 dated 20.09.2021 under Section 182 IPC (Annexure P-1) filed by SHO PS City Yamuna Nagar against the petitioner and all

consequential proceedings emanating therefrom are hereby quashed.

15. Petition is accordingly allowed.
16. Pending applications, if any, shall stand disposed of along with
this judgment.

(SANJIV BERRY)
JUDGE

11.08.2023
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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No