

246 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38874-2022
DECIDED ON :-09.02.2023

Santosh Kumar Yadav

...Petitioner.

V.

State of Haryana and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sanjiv Kumar Yadav, Advocate,
for the petitioner.

Mr. Gaurav Gurcharan Singh Rai, DAG, Haryana.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of Kalandra/complaint filed against the petitioner at the instance of respondent No.2, vide rapat No.11, dated 14.07.2022, under Sections 107/150 Cr.P.C., Police Post Model Town, Police Station Baldev Nagar, District Ambala.

Arising out of a matrimonial dispute between the petitioner and his wife, namely, Nilisha, a kalandra under Sections 107/150 Cr.P.C. was filed against the petitioner, vide rapat No.21, dated 27.05.2022, Police Post Model Town, Police Station Baldev Nagar, District Ambala, wherein, the petitioner has been facing the proceedings pending before the Court of SDM, Ambala City.

During the pendency, besides few other litigations, the petitioner also moved one complaint dated 20.06.2022 against his wife-Nilisha as well

as other relatives before the Superintendent of Police, Ambala City, which was forwarded to Chownki Incharge, Model Town, Ambala City for carrying out an inquiry thereupon. In view thereof, the petitioner appeared before the inquiry officer on 04.07.2022 and suffered his statement, however, instead of taking any action upon the complaint submitted by the petitioner, a fresh kalandra under Sections 107/150 Cr.P.C. came to be prepared and presented against the petitioner as well as his wife and other relatives vide rapat No.11 dated 14.07.2022, Police Post Model Town, Police Station Baldev Nagar, District Ambala by recording that the petitioner was not coming forward for recording of his statement before the police officials.

In the aforesaid facts and circumstances, challenging the same learned counsel for the petitioner submits that respondent No.2 while filing kalandra against the petitioner, vide rapat No.11 dated 14.07.2022 exceeded his jurisdiction. He submits that except for mentioning of one line in the kalandra that for the purpose of keeping peace and to maintain law and order, no reasoning in support thereof has been recorded by respondent No.2 so as to strengthen his apprehension about breach of peace. He further submits that there is no reason to present second kalandra against the petitioner on the basis of same set of averments, when he is already facing proceeding in kalandra dated 27.05.2022.

Learned counsel also submits that the petitioner has already appeared before the inquiry officer on 04.07.2022, in pursuance to his complaint dated 20.06.2022 and, thus, respondent No.2 went wrong on facts while recording that the petitioner was not coming forward for recording of his statement and, thus, prays for quashing thereof.

Having filed reply in the shape of affidavit of Mr. Ramesh Kumar, Deputy Superintendent of Police, Ambala on behalf of respondent-State, learned State counsel submits that in pursuance to the repeated complaints submitted by the petitioner-husband as well as his wife, the respondents were compelled to file present kalandra, so as to maintain peace as well as law and order.

I have heard learned counsel for the parties and gone through the paper book.

A perusal of kalandra presented against the petitioner, vide rapat No.11 dated 14.07.2022 shows that no material evidence or circumstance has been disclosed by respondent No.2 before recording one line unreasoned apprehension about breach of peace and maintaining law and order.

Perusal of Section 107 Cr.P.C. clearly shows that kalandra under this section has to be based on substantive information about an imminent danger to breach of peace, disturbance of public tranquility or doing any wrongful act that may disturb the public tranquility or create an emergent situation. Reference can be made to a decision rendered by Hon'ble the Supreme Court in case of ***“Rajender Singh Pathania vs. State of N.C.T. of Delhi and others, 2011(3) RCR 827.*** Relevant para 14 is reproduced hereunder for reference:-

“ The object of the [Sections 107/151 Cr.P.C.](#) are of preventive justice and not punitive. S.151 should only be invoked when there is imminent danger to peace or likelihood of breach of peace under [Section 107 Cr.P.C.](#) An arrest under S.151 can be supported when the person to be arrested designs to commit a cognizable offence. If a proceeding under [Sections 107/151](#) appears to be absolutely necessary to deal with the threatened apprehension of breach of peace, it is

incumbent upon the authority concerned to take prompt action. The jurisdiction vested in a Magistrate to act under [Section 107](#) is to be exercised in emergent situation.”

In the present case, a perusal of impugned kalandra shows that the wife of the petitioner, namely, Nilisha has not even expressed any apprehension about breach of peace and thus, in the absence thereof, the proceedings are totally uncalled for. In addition, it may be pointed out here that as regards the other reason recorded in the impugned kalandra regarding non-appearance of petitioner for the purpose of recording of his statement, the same is factually incorrect and against records. In fact, the petitioner appeared before the inquiry officer on 04.07.2022, in pursuance to his complaint dated 20.06.2022, which itself shows that there has been non-application of mind on the part of respondent No.2 while proceeding against the petitioner. Moreover, this fact has not been controverted by the respondent-State in its written statement. Section 107 Cr.P.C. requires that there has to be sufficient ground for proceeding against the person and even if the content of kalandra is accepted on its face value, no material has been brought on record to show that in what way lodging of complaint against the wife has disturbed the public tranquility or was going to disturb the public peace. The purpose of Section 107 Cr.P.C. is preservation of public peace and tranquility, which question in the facts of the case did not arise.

I also find merit in the submissions made by the petitioner's counsel that when another kalandra on the basis of same set of facts and allegations and primarily for the same purpose is already pending, there is no basis for presenting another kalandra against the petitioner. In case of any subsequent misconduct by the petitioner, he can always be proceeded against earlier kalandra dated 27.05.2022, rather than presenting another

kalandra against him.

A single Judge Bench of Delhi High Court in “*Ram Prakash and another vs. The State, 1997(2) RCR (Criminal) 196*” where a dispute between landlord and tenant resulted in filing of kalandra under Section 107 Cr.P.C., held that the disputes between landlord and tenant has nothing to do with public tranquility or breach of peace and repeated complaints/counter complaints against each other would not constitute an offence to invoke Section 107 Cr.P.C.

In view of the discussion made herein above, the present petition is allowed and the impugned kalandra filed vide rapat No.11 dated 14.07.2022, under Sections 107/150 Cr.P.C., Police Post Model Town, Police Station Baldev Nagar, District Ambala (Annexure P-1) is quashed.

09.02.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No