

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.202

Case No. : CRM-M-34684-2019

Date of Decision : February 27, 2023

Mukhtar Singh Petitioner

vs.

State of Punjab and another Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. H. S. Saggu, Advocate
for the petitioner.

Mr. Jaiteshwar S. Bhandari, AAG, Punjab
for respondent no.1 – State.

None for respondent no.2.

* * *

GURBIR SINGH, J. :

This is a petition under Section 482 Cr.P.C. for quashing of Kalandra Report No.19 dated 30.01.2019 (**Annexure P-1**), under Section 182 IPC, registered at Police Station Sadar Batala, District Gurdaspur.

Learned counsel for the petitioner states that the petitioner made a complaint dated 29.06.2017 (**Annexure P-2**) to Senior Superintendent of Police, Police District Batala (bearing No.667-MPC dated 07.07.2018) against Narinder Singh (Fauji) son of Chuhar Singh on the allegations that said Narinder Singh represented to the petitioner that he would get his son namely Sandeep Singh appointed as ASI in Police Department and would receive Rs.25 lacs to get this work done. The

petitioner paid Rs.15 lacs to Narinder Singh and it was settled that an
MONIKA
2023.03.02 13:27
I attest to the accuracy and
integrity of this document

amount of Rs.10 lacs would be paid after issuance of appointment letter in favour of his son but Narinder Singh, despite lapse of one year, neither got job for son of the petitioner nor returned his money. So, the petitioner demanded legal action against Narinder Singh. The police failed to take any action against Narinder Singh. Therefore, the petitioner filed a criminal complaint dated 16.01.2018 against Narinder Singh in the Court of learned Judicial Magistrate Ist Class, Batala (**Annexure P-3**) and Narinder Singh was summoned by the Court for the offence committed under Sections 420/406 IPC. By using influence, Narinder Singh got the complaint against him before the Senior Superintendent of Police filed and moved an application bearing No.1121-P dated 24.04.2018 before the Senior Superintendent of Police, Batala for taking action against the petitioner under Section 182 IPC. On coming to know about the action being taken by the police, the petitioner filed an application No.3741 dated 14.11.2018 before the Senior Superintendent of Police, Batala stating that until finalization of criminal complaint filed by him, Kalandra under Section 182 IPC is not maintainable against him. The said application was marked to Deputy Superintendent of Police, Fatehgarh Churian for inquiry, who submitted report dated 10.12.2018 (**Annexure P-4**), concluding therein that till the criminal complaint filed by the petitioner was decided by the learned Judicial Magistrate Ist Class, Kalandra should not be filed in the Court. This report was accepted by Senior Superintendent of Police, Batala. Despite the said acceptance, the SHO, Police Station Sadar Batala filed Kalandra in the Court against the petitioner, under political pressure from said Narinder Singh. It is further submitted that the learned Judicial

Magistrate Ist Class had already summoned the respondent Narinder Singh that there were sufficient grounds to proceed against him, therefore, no proceedings under Section 182 IPC could continue against the petitioner.

Learned State counsel has opposed the petition and submitted that it is the Trial Court which is to decide whether the petitioner has committed any offence or not.

Heard.

The complaint Annexure P-2 was filed with Senior Superintendent of Police, Batala but Kalandra under Section 182 IPC has been submitted by the SHO, Police Station Sadar Batala stating that the petitioner has filed false complaint against Narinder Singh.

Extract of Section 182 IPC 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, or with both.”

For taking cognizance for offence under Section 182 IPC, there is bar on the Court, as manifested through Section 195 Cr.P.C., which reads as under :-

“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 by such officer of the Court as that Court may authorise in writing in this behalf, 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 is 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.”

If Section 182 IPC and Section 195 Cr.P.C. are read jointly, it is clear that offence under Section 182 IPC is essentially viewed as an offence under public interest and on a wrongful invocation of authority of public servant, the Court can take cognizance of offence under Section 182 IPC, only on complaint in writing by a public servant. The public servant concerned must, according to Section 195(1)(a) Cr.P.C., only be the public servant to whom the false information is given.

I find support from a case of Hon'ble Supreme Court in **Daulat Ram vs. State of Punjab** reported as **AIR 1962 SC 1206**. In the case in hand, complaint was filed with Senior Superintendent of Police (Annexure P-1) but the Kalandra was filed by SHO, who was not the person with whom the complaint was filed. The Court could not take cognizance of

Kalandra under Section 182 IPC, filed by the SHO and such proceedings are clearly abuse of process of law. Accordingly, Kalandra in question and all the proceedings arising therefrom are hereby quashed.

February 27, 2023
monika

(GURBIR SINGH)
JUDGE

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