

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. CRM-M-35485-2019
Reserved on 08.05.2023
Pronounced on: 16.05.2023

Yash Pal SinghPetitioner

Versus

State of Haryana and anotherRespondents

2. CRM-M-2328-2023
Reserved on 08.05.2023
Pronounced on: 16.05.2023

Yashpal SinghPetitioner

Versus

State of HaryanaRespondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. S.S. Antal, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

MANJARI NEHRU KAUL, J.

1. This order shall dispose of above referred two petitions as they arise out of the same Kalandra and identical question of facts and law are involved in them.

2. In CRM-M-35485-2019 the petitioner is seeking quashing of Kalandra DDE No.22 dated 01.05.2019 filed by the Superintendent of Police, Ambala under Section 182 of the IPC at Police Station Baldev Nagar, Ambala against him whereas in CRM-M-2328-2023 the petitioner is seeking quashing of order dated 11.11.2022 passed by

learned Judicial Magistrate 1st Class, Ambala vide which an application for amendment in the title of Kalandra in question and amendment in the list of witnesses in case titled as 'State Vs. Yashpal' was allowed.

3. Learned counsel for the petitioner while giving a brief background of the case has submitted that an FIR bearing No.171 dated 09.06.2017 under Sections 120-B, 406, 420, 467, 468, 471 and 506 of the IPC was registered at Police Station Baldev Nagar, Ambala City against 06 persons, at his instance. Thereafter, investigation was carried out by the police in the said FIR and on its completion, the investigating officer presented a cancellation report before the Trial Court. Subsequently, a protest petition (Annexure P-3 in CRM-M-35485-2019) against the aforementioned cancellation report was filed by the petitioner and one Mastan Singh. However, while the cancellation report was still pending consideration before the Court concerned, the police through the Station House Officer (SHO), Police Station Baldev Nagar, Ambala, filed the impugned Kalandra bearing DDE No.22 dated 01.05.2019 under Section 182 of the IPC at Police Station Baldev Nagar, against the petitioner.

4. Learned counsel for the petitioner *inter alia* contends that the Kalandra suffers from a patent incurable illegality. While inviting the attention of this Court to the head note of the impugned Kalandra, learned counsel contends that the Kalandra was filed through Inspector, Subhash Singh, SHO, Police Station Baldev Nagar, even though a written complaint was given to SP Ambala, on the basis of which the FIR was registered. He asserts that thus, it is evident from the aforesaid

that there has been a blatant violation of the provisions of Section 195 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') as proceedings under Section 182 of the IPC could have been initiated only by the officer i.e. SP Ambala, to whom the information, which was allegedly found to be false, was given and not by any other person much less the SHO. Learned counsel has further argued that the stand taken by the State that the Kalandra bore the signatures of SP Ambala would be of no consequence once the Kalandra had not been filed by the competent officer i.e. the SP Ambala.

5. Learned counsel has further submitted that subsequent to the filing of the petition CRM-M-35485-2019, the State realized its mistake. It then moved an application for amendment of head note of the Kalandra as well as list of witnesses, which was erroneously allowed by the learned Magistrate, Ambala even though the Cr.P.C. did not contain any such provision by which amendment of a complaint could be permitted, like in the Code of Civil Procedure, 1908. He has further argued that since the defect in filing of Kalandra by SHO goes to the root of the matter it would be deemed to be an incurable defect which could not have been rectified or cured by any subsequent amendment. Learned counsel in support of his submissions has placed reliance upon ***Daulat Ram Vs. State of Punjab : 1962 AIR 1206.***

6. Learned counsel has furthermore contended that more importantly since the protest petition filed by the petitioner was still pending consideration before the learned Trial Court, the Kalandra under Section 182 of the IPC could not have been filed during such

pendency as evidently the truthfulness or otherwise of the allegations levelled in the FIR was subjudice before the Trial Court. Hence, as long as the Court did not give a decision on the protest petition, a Kalandra under Section 182 of the IPC could not have been filed. Learned counsel has vehemently argued that two simultaneous proceedings qua the same matter could not be permitted to proceed as it would seriously prejudice the petitioner and a risk always existed of contradictory decisions being given in both the proceedings. In support, learned counsel has placed reliance upon ***Tarlochan Singh Vs. State of Punjab : 2007 SCC OnLine P&H 394.***

7. Per contra, learned State counsel has vehemently submitted that limitation period for taking cognizance of an offence under Section 182 of the IPC is one year from the date of its commission, as prescribed under Section 468 of the Cr.P.C. Therefore, the Kalandra would be barred by limitation if the outcome of the protest petition filed by the petitioner is awaited. Learned State counsel has asserted that a danger always loomed large that unscrupulous litigants could intentionally prolong its conclusion to evade proceedings under Section 182 of the IPC. He has further submitted that even otherwise the protest petition and the Kalandra being two distinct proceedings would have to be decided on their own individual merits, on appreciation of evidence led in both the cases. Hence, there was no bar in both the proceedings continuing simultaneously.

8. Learned State counsel has also controverted the submissions made by the counsel opposite by contending that the

Kalandra did not suffer from any illegality and has rather asserted that the provisions of Section 195 of the Cr.P.C. had been subsequently complied with, and the Kalandra which was prepared by the SP Ambala, also bore his signatures. Learned State counsel has urged that it was on account of an inadvertent clerical error, the name of SHO Ambala was mentioned instead of SP Ambala in the head note of the Kalandra which subsequently stood rectified as necessary amendments in the said regard had been carried out. Learned State counsel has still further urged that though admittedly there is no express provision for amendment of complaint under the Cr.P.C., however, there is no bar either, to carry out any corrections, moreso when no prejudice stands caused to the other side. In support, learned State counsel has placed reliance upon a judgment rendered by this Court in ***Vineet Sood versus State of Punjab : 2022 SCC OnLine P&H 2749***.

9. I have heard learned counsel for the parties and perused the relevant material on record.

10. A perusal of the Kalandra (Annexure P-4 annexed with CRM-M-35485-2019) reveals that it had been prepared by the SP Ambala who had affixed his signatures thereon at all the relevant places. It is not even the case of the petitioner that the Kalandra in question was prepared and then filed by the SHO. No doubt, in the head note of the Kalandra it stands mentioned that it was filed through SHO, however, it appears to be indeed a clerical error which was subsequently rectified by way of an amendment. This error would not go to the root of the case to vitiate proceedings moreso when the

Kalandra was prepared by SP Ambala, who was competent under Section 195(1)(a) of the Cr.P.C. to initiate proceedings under Section 182 of the IPC.

11. Coming to the question qua grant of permission to amend a complaint, no doubt in the Cr.P.C. no such provisions for amendment are provided but an application for seeking amendment to rectify a clerical error or to correct a curable infirmity can always be allowed.

12. The Hon'ble Supreme Court in ***S.R. Sukumar Vs. S. Sunaad Raghuram : (2015) 9 SCC 609***, while relying upon its own decision in ***U.P. Pollution Control Board Vs. Modi Distillery and others : (1987) 9 SCC 684***, has held as under:-

“18. What is discernible from the U.P. Pollution Control Board’s case is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.”

13. Hence, in the case in hand, no prejudice can be said to have been caused to the petitioner on account of the amendment allowed, and which was carried out prior to the Court taking cognizance of the offence.

14. In CRM-M-35485-2019, the essential question which arises for consideration of this Court is as to whether proceedings under

Section 182 of the IPC could have been initiated during the pendency of a complaint/protest petition instituted on the same facts and allegations as contained in the FIR.

15. To adjudicate upon this question, there could be two scenarios i.e. scenario No.1, where a false complaint/information given to the police was not followed by a judicial enquiry, and scenario No.2 where a false information/complaint was given to the police, but was followed by a judicial enquiry in the form of a complaint/protest petition on the same set of facts and allegations. In the former scenario, there can be no bar to the initiation of proceedings under Section 182 of the IPC by the officer concerned, under Section 195(1)(a) of the Cr.P.C. However, in the latter scenario, only a complaint under Section 195(1)(b) would be maintainable for prosecution under Section 211 of the IPC. It would be apposite to refer to a judgement rendered by Three Judge Bench of the Hon'ble Supreme Court in '**State of Punjab Vs. Brij Lal Palta : AIR 1969 SC 355**, where after discussing contrary views of different high Courts it was held as under:-

“7. It seems to us that so far as prosecution under Section 211 of the Penal Code is concerned, once a complaint filed by the informant is being proceeded with which is based on the same facts and allegations on which the first information was registered it is not open to a Magistrate to take cognizance of any offence alleged to have been committed under that section unless there has been proper compliance with the provisions of Section 195 (1) (b) of the Cr. P. C. It will lead to very anomalous results if any other view is accepted e g., if the complaint is ultimately dismissed and the Magistrate refuses to lodge a complaint under Section 195 (1) (b) its provisions will be defeated or circumvented if the police can move the Magistrate to take cognizance on a police report of an offence under Section 211. We are fortified in the view we are taking by the following observations at p. 528 (of SCR) = (at p. 532 of

AIR) in M. L. Sethi's case, .

"The question on which the decision in the present case hinges is whether it can be held that any proceedings in any Court existed when that Magistrate took cognizance. If any proceeding in any Court existed and the offence under Section 211, I. P. C. in the complaint filed before him was alleged to have been committed in such a proceeding, or in relation to any such proceeding, the Magistrate would have been barred from taking cognizance of the offence. On the other hand if there was no proceeding in any Court at all in which, or in relation to which, the offence under Section 211 could have been alleged to have been committed, this provision barring cognizance would not be attracted at all."

*8. As regards the position in similar circumstances in respect of an offence under Section 182, the conflict of judicial opinion has already been noticed. The text books are full of a vast number of cases taking one view or the other. In our opinion the present case is of the type where the facts stated in the police report disclosed an offence under Section 211, Indian Penal Code. It is true that the offence under Section 182 is distinct from the one under Section 211 though the latter is more serious and may include the offence under the former section. The Magistrate can take cognizance of an offence under Section 182 on a complaint in writing of the police officer by virtue of the provisions contained in Section 195 (1) (a) of the Cr. P. Code. **But it would virtually lead to the circumvention of the provisions of Section 195 (1) (b) if the proceedings under Section 182 can continue where the offence disclosed is covered by Section 211, Indian Penal Code and a complaint is pending which has been filed by the informant on the same facts and allegations as were contained in his first information report.**"*

16. Adverting to the case in hand, it is a matter of record that subsequent to the filing of the cancellation report, a protest petition was filed by the petitioner which is still pending adjudication. In case the protest petition/complaint of the petitioner is eventually found to be meritless, he would be liable for commission of an offence under

concerned to proceed under Section 195(1)(b) of the Cr.P.C. Therefore, in view of the law laid down in *Brij Lal Palta's case (supra)*, since proceedings in the protest petition are still pending before a judicial forum, proceedings under Section 182 of the IPC against the petitioner, would be unsustainable.

17. As a sequel to the above discussion, the impugned Kalandra bearing DDE No.22 dated 01.05.2019 filed by the Superintendent of Police, Ambala under Section 182 of the IPC at Police Station Baldev Nagar, Ambala is quashed. Since the protest petition has been pending since the year 2018, this Court deems it appropriate to direct the Court concerned to make earnest efforts to decide it expeditiously in accordance with law.

18. As a sequel to the above, both the petitions are disposed of accordingly.

19. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

16.05.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No