

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-43063-2022

Date of Decision: 24.04.2023

Kulwant Singh & Ors.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CRM-M-7145-2020

Nirmal Singh

... Petitioner

VS.

State of Punjab & Anr.

... Respondents

CRM-M-322-2022

Jasbir Singh Malhi @ Jasvir Singh Malhi

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Prateek Pandit, Advocate,
Mr. KS Dhillon, Advocate, for the petitioners

Mr. Rajiv Verma, DAG Punjab

Mr. Hitesh Verma, Advocate
for respondent No.2 in CRM-M-7145-2020
for respondent No.3 in CRM-M-322-2022

Sandeep Moudgil, J.

1. By this order, I shall dispose of the above-cited 3 criminal misc.petitions filed by the petitioners seeking quashing of Kalandra registered vide report No.29 dated 14.02.2019 (Annexure P1) under Section 182 IPC at Police Station Kartarpur, District Jalandhar pending in the court of JMIC, Jalandhar and also for quashing the orders dated 07.03.2019 and 26.04.2019

(Annexure P3 & P4) passed by JMIC vide which notice has been issued to the petitioners to face trial in above-said Kalandra. For facts and order, CRM-M-43063-2022 is being treated as the lead case.

2. The brief facts necessary for determination of the present case are that vide report No.29 dated 14.02.2019 under Section 182 IPC, Police Station Kartarpur, District Jalandhar, a kalandra has been presented in the court of JMIC, Jalandhar against the petitioners and their co-accused. The same has been forwarded to the trial court vide application under Section 195 CrPC. In the said kalandra, the trial court vide order dated 07.03.2019 has issued notice to the petitioners to appear before the court and face trial. The trial court in its order dated 07.03.2019 has mentioned that police has presented challan but a kalandra is in the nature of a complaint. The said mistake was rectified by the trial court vide order dated 26.04.2019 and the notice to the accused was issued for 04.06.2019.

3. The allegations as leveled in the kalandra are that in 2015 co-accused, Nirmal Singh (petitioner in CRM-M-7145-2020) had given complaints to the police against Sakattar Singh - respondent No.2. The said complaints were regarding illegal ploughing of Bajra crop of the Nirmal Singh by respondent No. 2 and his associates. The said complaints had been consigned to office in the year 2017 as the police after obtaining opinion from District Attorney (Legal) had reached the conclusion that no criminal offence was made out. Respondent No. 2 Sakattar Singh, thereafter, vide his application dated 12.07.2018 submitted to the police alleged that Nirmal Singh in the year 2015 had given false complaints to the police against him and therefore, action be taken against him U/s 182 Cr.P.C. The said

application has resulted in the presentation of the impugned kalandra against the petitioners also wherein the petitioners and their co-accused have been summoned vide notices dated 07.03.2019 and 26.04.2019.

4. Learned counsel for the petitioners submits that in the present case, the basis of kalandra U/s 182 IPC are the alleged false complaints given by Nirmal Singh to the police against respondent No.2. A perusal of the same would show that the same have been given to SSP, Jalandhar (Rural) and Inspector General of Police, Jalandhar. However, the kalandra has been presented by SHO P.S. Kartarpur under his signatures. It is urged that the kalandra U/s 182 CrPC could have only been presented by the concerned officer/public servant to whom the alleged false information/complaint was given or by some officer/public servant to whom he is administratively subordinate.

5. It is further averred that the alleged false information has been given to SSP, Jalandhar (Rural) and Inspector General of Police, Jalandhar. Thus as per the mandate of Section 195 CrPC, the kalandra U/s 182 CrPC, could have only been presented by the said officer or by a superior officer to whom they were subordinate and therefore, SHO PS Kartarpur was not competent to present kalandra U/s 182 CrPC. As per section 195 Cr.P.C no court will take cognizance of any offence punishable under sections 172 to 188 IPC, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. In the present case, the said Nirmal Singh Informant gave complaints to Inspector General of Police, Jalandhar Zone and SSP (Rural) Jalandhar and they are the concerned public servant. As per law, only they or their Superiors

were competent to present Kalandra, if any, in the court. The respondent No.2 i.e. S.H.O, Kartarpur, is not the concerned public servant and no court can take cognizance of Kalandra submitted by respondent no.2 in view of section 195. Reliance has been placed on the decision of this Court in **Dr. Sham Lal Thukral vs. State of Punjab, 2009 (3) RCR (Criminal) 163**, wherein this Court quashed the kalandra under Section 182 IPC after observing that filing of Kalandra under the signatures of SHO when complaint was made to SSP does not fulfill requirement of law.

6. Further, it is contended that the impugned kalandra is also hit by the provisions of Section 468 of CrPC. The alleged false complaints were given in the year 2015 and the same were consigned to office on 06.06.2017 on the ground that no offence as is made out. The offence U/s 182 IPC is punishable with imprisonment for a period of six months or fine of Rs 1000/-. In view thereof, the period of limitation for taking cognizance of the said offence as per section 468(2)(b) CrPC is one year. However, in the present case, the kalandra has been prepared on 14.02.2019 and presented in court on 07.03.2019. Even the application given by respondent No. 2 for taking action U/S 182 IPC against the petitioners is dated 12.07.2018 i.e. after more than one year of the consigning of the alleged false complaints given by the petitioner. Thus, the trial court erred in taking cognizance of the impugned kalandra as the same is hit by bar of limitation.

7. Furthermore, the false complaints are alleged to have been made by Nirmal Singh and not the petitioners. It is therefore, inexplicable as to how the petitioners who have not even been alleged to have given any false complaint are liable to be prosecuted under section 182 Cr.P.C.

8. Learned counsel further submitted that the offence under Section 182 IPC, as mentioned in Kalandra is non-cognizable as per the First Schedule of CrPC. As per section 155(2), CrPC, no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case. The offence as alleged, at the very inception, were non-cognizable and no order or permission to investigate the said non-cognizable offences has been taken by concerned public servant from the court of Magistrate. Section 155 CrPC bars police from investigating the non-cognizable case without sanction from the court of Judicial Magistrate. Thus, Kalandra is liable to be quashed on this ground also.

9. Learned State counsel as well as counsel for the private respondents submitted that though SSP, Jalandhar had not signed the kalendra but it was attested by him and such a defect cannot be held to be fatal. It is thus prayed that the petitions filed by the petitioners ought to be dismissed by pleading that during the inquiry, the information given by the petitioners was found to be false and proceedings under Section 182 IPC have rightly been initiated against them.

10. Heard learned counsel for the parties and gone through the record.

11. The legal issue involved in the present petition is regarding the maintainability of the kalendra under the signatures of SHO, Police Station, Jalandhar when the complaint had been made to the IGP/SSP, Jalandhar. The Supreme Court in [Daulat Ram v. State of Punjab, AIR 1962 Supreme Court 1206](#), had opined that if a kalendra is presented under the signatures of SHO even in spite of there being approval by the SSP for presentation thereof, the

same would be incompetent as the requirement is in terms of the provisions of the Act that it should be signed by the SSP himself. The power cannot be delegated. Paras 3 and 4 of the judgment can be referred to, which read as under:-

“The only question in this case is whether a complaint in writing as required by s. 195 had been presented by the public servant concerned. The public servant who was moved by the appellant was undoubtedly the Tehsildar. Whether the appellant wanted the Tehsildar to take action or not, the fact remains that he moved the Tehsildar on what is stated to be a false averment of facts. He had charged Hans Raj and Kans Raj with offences under the Penal Code and he had moved his superior officer for action even though he might have stated in the letter that it was only for his information. We are prepared to assume that he expected that some action would be taken. In fact his second letter that he had compromised the matter and the proceedings might be dropped clearly shows that he anticipated some action on the part of his superior officer. The question is therefore whether under the provisions of s. 195, it was not incumbent on the Tehsildar to present a complaint in writing against the appellant and not leave the court to be moved by the police by putting in a charge sheet. The words of s. 195 of the Criminal Procedure Code are explicit. The section reads as follows:-

“(1) No Court shall take cognizance-(a) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

“The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no

court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of s. 195. The words "no court shall take cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.

Now the offence under s. 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that s. 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar". This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of s. 195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the

public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab inito and the conviction cannot be maintained.”

12. Similar view has been expressed by the Apex Court in a recent judgment in [P.D. Lakhani and another v. State of Punjab and others](#), AIR 2008 SCW 3357 relying upon its earlier judgment in Daulat Ram's case (supra). Relevant para thereof is extracted below:-

“No complaint, therefore, could be lodged before the learned Magistrate by the Station House Officer. Even assuming that the same was done under the directions of Senior Superintendent of Police, Jalandhar, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore, cannot be done by an inferior officer. It does not provide for delegation of the function of the public servant concerned. We may notice that in terms of sub-section (3) of Section 340 of the Code, a complaint may be signed by such an officer as the High Court may appoint if the complaint is made by the High Court. But in all other cases, the same is to be done by the presiding officer of the court or by such officer of the court as it may authorize in writing in this behalf. Legislature, thus, wherever thought necessary to empower a court or public servant to delegate his power, made provisions therefor. As the statute does not contemplate delegation of his power by the Senior Superintendent of Police, we cannot assume that there exists such a provision. A power to delegate, when a complete bar is created, must be express; it being not an incidental power.”

13. As in the present case, this Court finds that the impugned kalendra itself was not maintainable having been filed by an incompetent person i.e. SHO inasmuch as the complaint was filed with the IGP/SSP, Jalandhar. The Station House Officer would have jurisdiction to investigate into the matter provided a information/Kalandra was lodged by him in terms of the complaint made by the petitioner Nirmal Singh. Whatever action was taken in the matter was pursuant to the filing of the complaint filed with the Inspector General of Police/Senior Superintendent of Police, Jalandhar. Section 195 contains a bar on the Magistrate to take cognizance of any offence. When a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction. In a case of this nature kalandra, for all intent and purport was made before the Senior Superintendent of Police and not before the Station House Officer.

14. Secondly, as regards the point that the Kalandra is barred by limitation, it is apt to reproduce Section 468 CrPC which reads as under:-

“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 the case may be, the most severe punishment.”

15. Section 468 Cr.P.C. stipulates that after the lapse of period of limitation, a bar is instituted that prevents the Court from taking cognizance of an offence of the categories which are enumerated under Section 468(2) Cr.P.C. This bar can only be relaxed under Section 473 Cr.P.C., according to which, any Court has the discretion to take cognizance of an offence after the expiry of the period of limitation. However, such cognizance needs to be accompanied with a reasonable explanation as to how the Court satisfied itself in extending the period of limitation. Now as per Section 468(2) Cr.P.C. the period of limitation for any offence punishable with an imprisonment term exceeding one year, but not exceeding three years, is three years. Therefore, if the complaint is filed after three years of the alleged offences as per Section 468(2)(c) Cr.P.C. taking place, then a Court will be barred from taking cognizance of the same and any order that is rendered pursuant to this will be without jurisdiction.

16. As regards the facts of the present case, the maximum punishment provided under Section 182 IPC i.e. of 6 months and as per Section 468 CrPC, the limitation to take cognizance has been prescribed to be

one year, if the offence is punishable with imprisonment for a term exceeding on year but not exceeding three years.

17. The Supreme Court in *State of Rajasthan v. Sanjay Kumar, 1998 (5) SCC 82* while dealing with Section 468 Cr.P.C. has observed as follows:-

"In the Cr.P.C, 1973, Chapter XXXVI has been added prescribing limitation for taking cognizance of certain offences with a view to expedite the process of detection and investigation of crimes and also to ensure observances of the principle of fairness in the trial of the offences by barring belated prosecution. Delay in prosecution of offences causes undue hardship as it keeps the sword hanging on the heads of accused persons and it also results in the material evidence getting vanished. This chapter applies to all such offences for which punishment prescribed is less than three years. But it does not apply to offences for which punishment prescribed is more than three years and to economic offences under various Acts, which are excluded under Central Act 12 of 1974 or any State Acts. It contains seven Sections 467-473. Section 467 defines the expression 'period of limitation' used in the chapter. Section 468 creates bar to taking cognizance of offences after lapse of period of limitation. Sections 469 to 473 deal with various aspects of computation of limitation. Of the aforementioned provisions, we are concerned with Sections 468 and 469. Sub-section (1) of Section 468 ordains that no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the 'period of limitation' prescribed thereunder. This, however, is subject to the other provisions of the Code. Sub-section (2) postulates different period of limitation for offences with reference to the punishment provided for them; if the

punishment provided for an offence in any Act is only fine, the period of limitation fixed is six months; if the offence is punishable with imprisonment for a term not exceeding one year, the period of limitation prescribed is one year and if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the period of limitation laid down is three years. And Sub-section (3) spells out the rule of limitation in cases of joinder of charges; if a person is tried for more offences than one, then the period of limitation will be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment; for example, if a person is tried for various offences and some of them are punishable with fine and some with imprisonment for a term less than a year and some for which the punishment is provided upto three years, then the period of limitation for all the offences, if they are tried together, will be three years."

18. In the present case, the complaints dated 18.08.2015, 19.09.2015 and 03.11.2015 were given by Nirmal Singh to IGP/SSP, Jalandhar. The Kalandra was filed by Sakkatar Singh in the Court of JMIC, Jalandhar after about 4 years i.e. on 07.03.2019. Thus, the limitation to take cognizance under Section 182 IPC has already expired and as such the Kalandra is liable to be quashed on this ground. Even otherwise, it is only Nirmal Singh who has submitted the complaint and not the other petitioners. Further, the respondent Sakkatar Singh has failed to show that the petitioners gave any false complaint or information to the concerned police officer and that the petitioners were in the prior knowledge or belief that the said information was false. So much so, as per Section 155(2) CrPC, as regards the information as

to non-cognizable cases and investigation of such cases, no police office shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. In the present case, the office as alleged, at the very inception were non-cognizable and no order or permission to investigate the said case was sought from the Magistrate. The matter qua the petitioners from the very inception was thus baseless and invalid and as per the legal maxim *sublato fundamento cadit opus* since the foundation itself has been removed, the structure is bound to fall.

19. In the backdrop of discussion made hereinabove after clinical examination of the record and the submissions, this Court hereby orders to quash the Kalendra registered vide report No.29 dated 14.02.2019 (Annexure P-1) under Section 182 IPC, 1861 registered at Police Station Kartarpur, District Jalandhar alongwith the orders dated 07.03.2019 (Annexure P-3) and 26.04.2019 (Annexure P-4) passed by JMIC Jalandhar vide which petitioners were ordered to face trial in the said Kalendra.

20. All the petitions stand allowed in the aforesaid terms.

21. A copy of this order be placed on the file of other connected cases.

24.04.2023

V.Vishal

1. *Whether speaking/reasoned?*

2. *Whether reportable?*

(Sandeep Moudgil)
Judge

Yes/No

Yes/No