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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17673-2024 (O&M)
Date of decision: 09.04.2024

Deepa

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ramnish Puri, Advocate and
Ms. Monika Tanwar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner through instant petition under Section 482 Cr.P.C. is seeking quashing of DDR No.22 dated 08.11.2023 (Annexure P-2) under Section 182 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Chhachhrauli, Yamunanagar as well as Kalandra dated 08.11.2023 under Section 182 of IPC (Annexure P-3) and all other consequential proceedings arising therefrom.
2. Allegedly, the petitioner borrowed a sum of Rs.35,000/- from Devender Singh, who was a friend of husband of the petitioner, which was needed for the medical treatment. The petitioner had issued a blank cheque

in favour of Devender Singh at the time of borrowing the said amount. Thereafter, Devender Singh started coming to house of the petitioner under different pretenses in the absence of her husband and sexually exploited her. Devender Singh also made casteist slurs against the petitioner and also recorded her obscene videos. The petitioner remained silent in order to avoid public humiliation but on 26.04.2023, the accused came to house of the petitioner and tried to force himself upon her. Due to this, the petitioner filed a complaint dated 28.04.2023 (Annexure P-1) against Devender Singh. Consequently, an FIR No.128 dated 05.05.2023 under Sections 342, 376, 504 of IPC and Section 3(1) of SC & ST Act was registered against the accused at Police Station Chhachhrauli, Yamuna Nagar. The investigation in the said FIR was done by DSP Narender Singh and later on, the same was carried by subsequent officers of the same rank. Ultimately, the accused was found innocent as the allegations levelled by the petitioner against him were found to be false. Thereby proceedings under Section 182 of IPC were initiated against the petitioner vide DDR (Annexure P-2). Consequently, Kalandra dated 08.11.2023 (Annexure P-3) was presented against the petitioner. Aggrieved against the same, the petitioner has approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner submits that it is a settled law that complaint under Section 182 of IPC can only be filed by the officer to whom the complaint has been made or by an officer superior to him, but in

the instant case, the complaint was made by the petitioner to S.P., Yamuna Nagar but the kalandra under Section 182 of IPC has been filed by the SHO, which is a sufficient ground to set aside the same. He further submits that a perusal of Section 182 of IPC, when read with Section 195 Cr.P.C., would clearly establish that the present petition deserves to be allowed and places reliance upon the case of *P.D. Lakhani and another Vs. State of Punjab and another, 2008(2) R.C.R.(Crl.) 838*.

4. Notice of motion.

5. On asking of the Court, Ms. Geeta Sharma, DAG, Haryana accepts notice on behalf of the respondent-State and with the consent of the learned counsel for the parties, the matter is taken up for final disposal today itself. Learned State counsel is unable to controvert the fact that the complaint made by the petitioner was addressed to the Superintendent of Police, Yamunanagar, whereas the impugned Kalandra (Annexure P-3) has been filed by SHO, Police Station Chhachhrauli, District Yamunanagar, under his name.

6. I have heard learned counsel for the parties and gone through the material available on record scrupulously. However, before proceeding further, it is pertinent to discuss the statutory provisions of Section 182 IPC and Section 195 Cr.P.C warranted for proper adjudication of the case at hand. Section 182 IPC and Section 195 Cr.P.C. read as follows:

“182 IPC. 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.*

The relevant extract of Section 195 Cr.P.C. has been reproduced

below: -

***“195. 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 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) XXXX XXXX

(4) XXXX XXXX

7. In the present case, a careful perusal of the record shows that the complaint (Annexure P-1) made by the petitioner was addressed to Superintendent of Police, Yamuna Nagar but the impugned DDR (Annexure P-2) and the Kalandra (Annexure P-3) have been lodged by the SHO, Police Station Chhachhrauli, Yamunanagar. Further, the investigation in the complaint made by the petitioner has been done by DSP, Yamunanagar. It is

a settled law that complaint under Section 182 IPC can be made by the officer to whom the complaint by the aggrieved was made or any officer superior to him, otherwise, Kalandra/Complaint under Section 182 IPC is not maintainable. The same view has been taken by the Hon'ble Supreme Court in the case of **P.D. Lakhani's** case (*supra*), wherein, a two-Judge Bench speaking through Justice S.B. Sinha made the following observations: -

“11. The report of compliance by Gian Singh was made to the CIA staff. CIA staff, in turn, placed it before the Senior Superintendent of Police. The proceedings, therefore, were, indisputably, initiated by the Senior Superintendent of Police, Jalandhar and not by the Station House Officer.

12. The Station House Officer would have jurisdiction to investigate into the matter provided a first information report was lodged by him in terms of the complaint made by the appellant No. 2. Whatever action was taken in the matter was pursuant to the order of the Senior Superintendent of Police Jalandhar. The High Court, in our opinion, thus, committed a manifest error in so far as it held that the as the complaint was addressed to the SHO, he was the appropriate authority to lodge a complaint in respect of an offence punishable under Section 182 of the Indian Penal Code. The fact that the search was made pursuant to the directions issued by the Senior Superintendent of Police, Jalandhar is not in dispute. 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, representation, if any, for all intent and purport was made before the Senior Superintendent of Police and not before the Station House Officer.

13. 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.”

8. A similar issue was dealt with by a Co-ordinate Bench of this Court in ***Mohinder Singh Vs. State of Punjab and another, CRM M-17855 of 2017*** decided on 16.08.2023, wherein the Kalandra filed by the concerned SHO under Section 182 IPC was quashed, while making the following

observations: -

*“6. In fact, in similar circumstances, a complaint was made to SSP Ludhiana and after holding inquiry, some information in the complaint was found to be false and the proceedings under Section 182 Cr.P.C. were ordered to be initiated by the SHO of the concerned police station and the kalendra under Section 182 Cr.P.C., was ordered to be quashed by this Court in the matter of **Babita v. State of Punjab and another 2008(4) RCR(Criminal) 516**, and the relevant extract of the said judgment has been reproduced below:-*

*"As far as second contention of counsel for the petitioner regarding the kalendra being incompetent on the ground that the same has been filed under the signatures of SHO, Police Station, Model Town, Ludhiana whereas the complaint was made to SSP, Ludhiana is concerned, the issue has been considered in detail by this Court in **Criminal Misc. No.60096-M of 2004 (Surjit Singh v. State of Punjab)** decided on 6.2.2008, wherein relying upon judgment of Hon'ble the Supreme Court in **Daulat Ram v. State of Punjab, AIR 1962 SC 1206**, it has been opined that if the prosecution is to be launched under Section 182 IPC, the complaint in writing should be made by the public servant concerned and not by any other person. Paras 3 and 4 of the judgment can be referred for reference which read as under: -*

"3. The only question in this case is whether a complaint in writing as required by Section 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 proceeding might be dropped clearly shows that it anticipated some action on the part of his superior officer. The question is therefore whether under the provisions of Section 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 Section 195 of the Criminal Procedure Code are explicit. The section read 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 Section 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 cognizance of the case except in the manner provided by the section.

4. Now the offence under Section 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 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 Section 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." (Sic This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of Section 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 initio and the conviction cannot be maintained."

7. A similar controversy was examined by the Hon'ble Supreme Court in the matter of **State of U.P. v. Mata Bhikh and others, (1994) 4 SCC 95** and held as follows: -

"A cursory reading of Section 195(1)(a) makes out that in case a public servant concerned who has promulgated an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate, i.e., some other public servant who is his official superior and under whose administrative control he works."

9. The Kalandra in the present case has been presented by SHO Police Station Chhachhrauli, Yamunanagar under his signatures but the complaint made by the petitioner was addressed to the SP, Yamuna Nagar. Investigation in the said complaint was done by DSP, Yamunanagar and the allegations in the complaint were found to be false. Eventually, only the S.P., Yamunanagar was competent to file the Kalandra in view of the provisions of Section 195 Cr.P.C. Thus, this Court is of the opinion that since the kalandra in the present case has been filed by an incompetent officer, the same is liable to be quashed.

10. In view of above discussion, present petition is allowed. Hence, DDR No.22 dated 08.11.2023 (Annexure P-2) registered under Section 182 of IPC, 1860 at Police Station Chhachhrauli, Yamunanagar and the Kalandra dated 08.11.2023 (Annexure P-3) as well as all other consequential proceedings arising therefrom, are hereby quashed.
11. All pending applications, if any, are disposed of, accordingly.

09.04.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

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