



201 IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CRM-M-36857-2017
DECIDED ON: 29.05.2024

DEEPIKA @ AAINA AND ANOTHER
.....PETITIONERS
VERSUS
STATE OF PUNJAB AND ANOTHER
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Amandeep Singh Manaise, Advocate
for the petitioners.

Mr. J.S. Rattu, DAG, Punjab.

SANDEEP MOUDGIL, J

1. RELIEF SOUGHT

The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked seeking quashing of *Kalandra* registered vide rapat No. 37, dated 27.09.2016 (Annexure P-1), under Section 182 of the Indian Penal Code, 1860 (for short 'IPC') filed by Station House Officer, Police Station Chharrata, District Amritsar pending in the Court of Judicial Magistrate Ist Class, Amritsar.

2. FACTS

The brief facts of the present case are that the marriage of the petitioner No.1 and Naresh Bawa was solemnized on 10.02.2012 as per Hindu rites and ceremonies and thereafter, both of them have cohabited at the residence of Naresh Bawa. Their marriage has been consummated and male child namely Lakshya was born on 24.11.2012. Since the beginning of their relationship the petitioner No.1 and Naresh Bawa were not having cordial relations and Naresh Bawa along-with his



family members started harassing to petitioner No.1 mentally as well as physically for bringing less dowry. With the intervention of respectables, a compromise was effected between the parties. Even though the behaviour of Naresh Bawa remained same. Finally, the petitioner No.1 was thrown out of her matrimonial house by Naresh Bawa and his family members. Thereafter, petitioner No.1 moved a complaint under Section 498-A and 406 IPC before the Senior Superintendent of Police, Batala wherein, an inquiry was conducted and the husband of petitioner No.1 namely Naresh Bawa was found innocent. Thereafter, petitioner No.1 moved another complaint under Sections 498-A and 406 IPC before the Illaqa Magistrate, Batala. Thereafter, the Kalandra under Section 182 IPC, was filed, on 28.09.2016, by Station House Officer, Police Station Chheharta , District Amritsar.

3. **SUBMISSIONS**

ON BEHALF OF PETITIONERS:

It has been submitted on behalf of the petitioners that the husband of petitioner No.1 namely Naresh Bawa is a politically influenced person and is hand in gloves with the police officials. Due to the said reason, the police has filed Kalandra under Section 182 IPC against the petitioners on 28.09.2016 before the Illaqa Magistrate, Batala for taking action the petitioners for filing a false complaint, which is illegal, wrong, arbitrary and without any jurisdiction, as the petitioner No.1 has never filed any complaint at Police Station Chheharta , District Amritsar. It is further submitted that, continuation of the kalandra, under Section 182 IPC, is, thus, nothing but an abuse of process of the Court.

ON BEHALF OF RESPONDENT-STATE

Learned State counsel has submitted that impartial inquiries were got conducted by the In-charge Women Cell, DSP Fatehgarh Churian and ADCP City-2,



Amritsar upon the applications moved by the petitioner No.1 against her husband Naresh Bawa, but the allegations levelled against him did not substantiate. Thus, Naresh Bawa, moved an application No. 1266-PC/W dated 20.08.2016 to the Commissioner of Police, Amritsar requesting therein, to initiate legal action under Section 182 IPC, which was marked to the Station House Officer, Chhehrata, who submitted his report through Additional Deputy Commissioner of Police, City-2, Amritsar had recommended for initiating criminal proceedings under Section 182 IPC, against the petitioners for filling of false applications against Naresh Bawa and the same was approved by Commissioner of Police, Amritsar. Hence, the Kalandara under Section 182 IPC stood presented in the trial Court.

4. ANALYSIS AND CONCLUSION

Admittedly, the petitioner No.1 has filed a various complaints/applications before the Police, wherein, enquiries were got conducted by various officers but nothing substantial had come with regard to the allegations levelled by the petitioners and thereafter, on same set of allegations, a private complaint under Section 498-A and 406 IPC was filed before the Illaqa Magistrate wherein, the Magistrate has taken cognizance of the complaint moved by the petitioner and the accused has been summoned.

Kalandra under Section 182 IPC has been moved by the Police during pendency of the complaint, which is totally misuse of process of law and same is liable to be quashed. Even in case, the Police finds the complaint to be false and a private complaint on the same set of allegations is still pending, the Kalandra is not maintainable.



This Court in the case of *“Babita vs State of Punjab and another”*, **2008(4) RCR (Criminal) 516**, has held that the complaint which was filed before the Senior Superintendent of Police whereas the kalendra was presented under the signatures of the SHO will not be maintainable as per the provisions of Section 195(1)(a) Cr.P.C. In the present case also a complaint was filed to Senior Superintendent of Police, Batala (Annexure P-2) whereas, the impugned Kalandara has been presented under the signatures of the SHO, which is not permissible as per the provisions of Section 195(1) (a) Cr.P.C.

This view has also been affirmed by Hon'ble the Supreme Court in case *“State of Punjab vs. Brij Lal Palta”*, AIR 1969 Supreme Court 355 wherein, the Apex Court has as under:-

“7. That once a complaint filed by the informant, which is based on the same facts and allegations on which the first information report was registered, is being proceeded with, it was not open to a Magistrate to take cognizance of any offence alleged to have been committed under Section 211 Indian Penal Code unless there has been proper compliance with the provisions of Section 195(1)(b) Criminal Procedure Code. It was further held that though the offence under Section 182 Indian Penal Code was distinct from the one under Section 211 Indian Penal Code, the latter was more serious and may include the offence under the former Section. The Magistrate could take cognizance of any proceedings under Section 182 Indian Penal Code could continue, where the offence disclosed was covered by Section 211 Indian Penal Code and a complaint was pending which had been filed by the informant on the same facts and allegations as were contained in his First Information Report. Similarly, on a parity of reasoning with regard to the offence under Section 211 Indian Penal Code, no cognizance could be taken by the Magistrate for the alleged offence under Section 193 Indian Penal Code, which was one of the Sections mentioned in Section 195(1) (b) Criminal Procedure Code.



8. *It is, thus, clear that if the case under Section 182 Indian Penal Code is allowed to proceed, a decision in the said case would tantamount to pre-judging the complaint filed by the petitioner. The prosecution of the petitioner under Section 182 Indian Penal Code during the pendency of his complaint on the same facts and allegations as mentioned in the FIR, would be an abuse of the process of the Court.*
9. *Resultantly, this petition succeeds. Calendra dated 8.5.2005 (Annexure P-1) and all the subsequent proceedings taken in pursuance thereof and pending in the Court of Judicial Magistrate 1st Class, Ludhiana are hereby quashed.*
- Petition allowed.”*

In view of facts as mentioned above, in case, proceedings under Section 182 IPC is allowed to continue, the same would tantamount to prejudice the complaint filed by the petitioner and the proceedings under Section 182 IPC during the pendency of the complaint on the same set of allegations would be an abuse of process of Court.

It is also evident that the Kalandara was filed by the Station House Officer, Police Station Chheharta , Amritsar, which is without any jurisdiction, as the petitioners filed the complainant before the Police District Batala.

Accordingly, the present petition is allowed and Kalandra under Section 182 IPC filed by the SHO, Police Station Chheharta on 28.09.2016 and all proceedings arising therefrom are hereby quashed qua the petitioners.

29.05.2024
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(SANDEEP MOUDGIL)
JUDGE

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