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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision : 25-04-2024

1. CRM-M-45242-2017

Gurmail SinghPetitioner

Versus

State of PunjabRespondent

AND

2. CRM-M-44806-2017

Beant KaurPetitioner

Versus

State f Punjab and anr.Respondent(s)

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mrs. Avin Sandhu, Advocate for the petitioner(s).

Mr. J.S. Arora, DAG Punjab.

Mr. Ishan Gupta, Advocate for
Mr. Harita Panthey, Advocate
For the complainant/respondent No.2.

PANKAJ JAIN, J. (Oral)

1. This order shall dispose off two petitions by way of a common order.

2. By way of the present petitions, petitioners are seeking quashing of the Kalendra No.205 dated 21.12.2015 (Annexure P-2) titled as “State Vs. Gurmail Singh and others” and summoning order dated 21.12.2015 summoning the petitioners to face proceedings on the basis of aforesaid Kalendra filed under Section 182 IPC.

3. Petitioners have filed complaint before SSP, Sangrur. Apart from the aforesaid complaint, two more complaints were filed through e-mail address to NRI Wing.

4. Counsel for the petitioner(s) submit that the NRI Wing is headed by the Officer of the Rank of ADGP. Counsel while assailing the Kalendra as well as the summoning order, submits that the same is in teeth of bare provisions as contained under Sections 195 of the Procedure Code. He submits that as per the same, Kalendra could have been initiated only by a Public Servant to whom complaint was made or by an Officer to whom such Public Servant was administratively supporting. He submits that the complaint was made to SSP, ADGP, yet Kalendra has been initiated by SHO who himself is administratively supporting to the said Public Servant.

5. Per contra, counsel for respondent No.2 submits that the petitioner is in habit of making false complaint against him. The Kalendra has been initiated after thorough enquiry and it is only on the recommendation of SSP which was downmarked to SP and thereafter to SHO that the Kalendra was submitted. He thus submits that in this way, requirement of Section 195 of the Code has been complied with.

6. I have heard counsel for the parties and have gone through the records of the case.

7. Before advertng to the merits of the case, it will be apt to peruse Section 195 of the Code which reads as under:-

“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 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 subclause (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 ordinarily 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 which the offences are alleged to have been committed.”

8. The Apex Court in the case of **P.D. Lakhani and anr. Vs**

State of Punjab and anr., cited as 2008(5) SCC 150 while dealing with

the similar proposition held as under:-

“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 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 authorise 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.

14. In Daulat Ram v. State of Punjab [(1962)2 SCR 812], Hidayatullah, J. (as the learned Judge then was), held as under :

"... 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 this case."

The said decision was followed by a Division Bench of this Court in State of U.P. v. Mata Bhikh & Ors. [(1994)4 SCC 95], stating :

*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 same has been followed by this court in CRM-M-39206 of 2023 decided on 20.02.2024 observing as under:-

"From the aforesaid ratio of law laid down by the Apex Court it is thus clear that mandate of Section 195 of the Code is that the complaint petition has to be filed only by the Public Servant concerned of his superior officer. It cannot be maintained by an inferior officer. In the present case since the complaint was admittedly submitted to Superintendent of Police Hisar, it is he who is the concerned Public Servant. Meaning thereby that the complaint can be maintained either by the Superintendent of Police Hisar or an officer superior to him. Since the complaint has been filed by an officer of the rank of Inspector, who is administratively subordinate to Superintendent of Police Hisar, the same suffers from inherent procedural defect and is in teeth of mandate of Section 195 of the Code."

10. Facts of the present case when gazed from the aforesaid prison, it is evident that the Kalendra has been presented not by authority as prescribed under Section 195 of the Code and the same is evident from the Kalendra itself, relevant extract of which reads as under:-

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“It is submitted that an application no. 5746/P dated 27.06.2015 from Harjit Singh s/o Baljinder Singh Jatt r/o Dasaunda Singh Wala P.S. Sandaurh against Gurmel Singh s/o Inder Singh Jatt R/o Farwali now resident of Canada, Beant Kaur w/o Gurmel Singh jatt r/o Farwali now residing in Canada, Varinder Singh Sohi s/o Gurmel Singh jatt r/o Farwali now residing in Canada, Dharminder Singh s/o Jarnail Singh jatt r/o Saraud p.s. Sadar Ahmedgarh and Rachhpal Singh s/o Santokh Singh jatt s/o Faizgarh p.s. Amargarh was given to SSP Sangrur which was marked to SP Malerkotla by SSP Sangrur with the subject.”

11. In view of above, this Court finds that the Kalendra initiated against the petitioner for offence under Section 182 IPC cannot sustain and the same is hit by the bare provisions as contained under Section 195 of the Code.

12. Consequently, petition(s) are allowed. Kalendra No.205 dated 21.12.2015 (Annexure P-2) titled as “State Vs. Gurmail Singh and others” and summoning order dated 21.12.2015 summoning the petitioner to face proceedings on the basis of aforesaid Kalendra are ordered to be quashed.

13. Photocopy of this order be placed on the connected case file.

25-04-2024
spn

(PANKAJ JAIN)
JUDGE

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