

Neutral Citation No.2024:PHHC:017628

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9087 of 2017
Reserved on:06.02.2024
Pronounced on: 08.02.2024

Roshan LalPetitioner

Vs.

State of HaryanaRespondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Sanjiv Kumar Aggarwal, Advocate and
Mr. Ojas Bansal, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

By way of present petition filed under Section 482 Cr.P.C., petitioner prays to quash Kalendra bearing Criminal Case No.58/2015 titled as State Vs. Roshan Lal, filed by SHO, Police Station Madlauda, District Panipat to prosecute the petitioner under Section 182 IPC (*wrongly mentioned as 182 Cr.P.C*), pending in the Court of learned Judicial Magistrate Ist Class, Panipat.

2. Perusal of the paper book reveals that the petitioner had made a complaint to Hon'ble Chief Minister, Haryana alleging grabbing of the ancestral property of his old aged father by giving beatings to him on the part of certain persons as named in the complaint. The complaint was sent by the Office of Chief Minister, Haryana to Director General of Police, Haryana, which ultimately was enquired into by Deputy Superintendent of Police, Gannaur and after completion of enquiry, the complaint was found to be false. It is SHO Police Station, Madlauda, who then filed Kalendra before the Court to prosecute the petitioner under Section 182 IPC submitting that the petitioner was habitual of giving false applications.

3. The short submission made by learned counsel for the petitioner is that the Kalendra in question as filed by SHO, Police Station Madlauda is not maintainable in view of bar created by Section 195 Cr.P.C.

4. Section 182 IPC provides punishment for giving false information so as to cause a public servant to use his lawful power to the injury of another person. However, Section 195(1)(a) of Cr.P.C, clearly bars any Court to take cognizance of an offence falling under any of the provisions under Sections 172 to 188 of 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 it. It 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 of some other public servant to whom he is administratively subordinate;

5. In the present case, learned State Counsel does not dispute the fact that Kalendra has not been filed by the Chief Minister, Haryana, to whom the complaint was made by the petitioner, which complaint was ultimately found to be false on necessary enquiry. There can also be no dispute in holding that SHO Police Station Madlauda is not superior to the Chief Minister, Haryana.

6. In ***Baldev Krishan Chopra Vs. State of Punjab and others, 2007(3) RCR (Criminal) 367***, similar were the facts before this Court. A complaint had been made to the Chief minister, which on police enquiry was found to be false. Chief Minister did not initiate any proceedings against the

complainant under Section 182 IPC. It was held by this Court that if complaint made to a public servant is found to be false, then decision to initiate proceedings under Section 182 IPC is to be taken by the public servant, before whom the complaint was made or by any public servant to whom he is subordinate. It was held further that this Court cannot even direct the Chief Minister to initiate action under Section 182 IPC and that it is for the public servant concerned to take decision to initiate proceedings. This Court further held that aggrieved party has a remedy in law of initiating criminal and civil proceedings for defamation.

7. Similarly in *Malkiat Singh Vs. State of Haryana, 1999(2) R.C.R (Criminal) 10*, a complaint to initiate action under Section 302 IPC was made to the Superintendent of Police. The allegations made in the complaint were found to be false. Proceedings under Section 182 IPC were lodged by SHO before the Magistrate. It was held by this Court that SHO was not competent to make the complaint, as the complaint could have been filed by the concerned SP to whom the false complaint was sent. Similar view has been taken in *Randhir Vs. State of Haryana and others, 2003(4) RCR (Criminal) 651*.

8. Learned State Counsel could not cite any law contrary to above.

9. In view of the factual and legal position as discussed above, the present petition is accepted. Kalendra bearing Criminal Case No.58/2015 titled as State Vs. Roshan Lal, filed by SHO, Police Station Madlauda, District Panipat to prosecute the petitioner under Section 182 IPC (wrongly mentioned as 182 Cr.P.C), pending in the Court of learned Judicial Magistrate Ist Class, Panipat along with all the subsequent proceedings arising therefrom, are hereby quashed.

February 08, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No