

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-28766 of 2019
Date of Decision: February 06, 2024

Kuldip Singh
.....Petitioner
versus

State of Punjab
.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Sunny K. Singla, Advocate
for the petitioner

Mr. Subhash Godara, Addl. A.G. Punjab

Harpreet Singh Brar, J. (Oral)

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing/setting aside the impugned judgment dated 05.03.2019 (Annexure P-5) passed by learned Additional Sessions Judge, Sangrur and order dated 28.11.2017 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Malerkotla in DDR No. 22 dated 28.04.2016 registered under Section 182 IPC at Police Station Sadar Ahmedgarh, District Sangrur (Annexure P-1).
2. The brief facts of the present case are that the kalandra bearing DDR No. 22 dated 28.04.2016 under Section 182 IPC has been registered against the petitioner. A false case has been registered against the petitioner and the SHO, Police Station Ahmedgarh has presented the above said kalandra against him without any authority.
3. Learned counsel for the petitioner *inter alia* contends that the prayer made by the petitioner is required to be allowed because as per the provision of Section 195 Cr.P.C. no Court can take cognizance 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 some other public servant to whom he is administratively subordinate. Admittedly, in the present case, the SHO Police Station, Sadar Ahmedgarh was not competent to present the impugned kalandra as the complaint filed by the petitioner was made to Senior Superintendent of Police, Sangrur. In view of the bar created under the statutory provision, the petitioner has approached the learned Judicial Magistrate 1st Class for his discharge. Learned trial Court has passed the impugned order by dismissing the application for discharge filed by the petitioner in a very cryptic manner without even advertng to the factual matrix and the statutory provision in this regard. Even learned Sessions Judge, Sangrur has dismissed the revision petition filed by the petitioner vide the impugned judgment dated 05.03.2019 (Annexure P-5).

4. Per contra learned State counsel supports the impugned findings of the learned trial Court as well as the revisional Court on the ground that at the time of filing of framing of charges the Court is not required to go through the probative value of defence and only required to evaluate the material whether *prima facie* offence is made out or not. Moreover, the kalandra was prepared under the instructions of the Senior Superintendent of Police concerned and he has also endorsed the same by putting his signatures.

5. Having heard learned counsel for the parties and after perusing the record, it transpires that the impugned kalandra dated 28.04.2016 under Section 182 IPC (Annexure P-1) was presented by the SHO, Police Station Sadar Ahmedgarh. Admittedly, the petitioner had filed a complaint before the Senior Superintendent of Police, Sangrur, as such in view of the statutory bar created

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under Section 195 Cr.P.C. the concerned SHO was not competent to present the impugned kalandra. Both the Courts below have failed to consider the case of the petitioner in the light of the bar created under Section 195 Cr.P.C. Reliance in this regard can be placed upon judgments passed by Hon'ble Supreme Court in *Daulat Ram vs. State of Punjab, AIR 1962 SC 1206* and *P.D. Lakhani and another vs. State of Punjab and another, 2008(2) RCR (Criminal) 838*.

6. In view of the bar created under Section 195 Cr.P.C. and the ratio of law laid down in *P.D. Lakhani (supra)* the present petition is allowed and the impugned kalandra bearing DDR No. 22 dated 28.04.2016 registered under Section 182 IPC alongwith all subsequent proceedings arising therefrom are quashed.

(HARPREET SINGH BRAR)
JUDGE

February 06, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No