

268

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-31619 of 2019(O&M)
Date of Decision: 01.02.2024**

MUKHTIAR SINGH DHALIWAL**... Petitioner****Versus****STATE OF PUNJAB****... Respondent****CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.**

Present:- Mr. P.P.S. Duggall, Advocate
for the petitioner.

Mr. Harpreet Singh, Addl. AG, Punjab.

SANJIV BERRY, J. (ORAL)

The instant petition has been preferred by the petitioner under Section 482 of the Code of Criminal Procedure for seeking quashing of the Kalendra, Complaint No.11/17 DOI: 05.07.2017 (Annexure P-4) under Section 182 IPC, Police Station Lambra District Jalandhar (Rural) and subsequent proceeding arising out of the same.

2. Briefly, the facts of the case are that a Kalendra under Section 182 IPC dated 05.07.2017 (Annexure P-4) was presented against the petitioner on the allegations that FIR No.4 dated 07.02.2012 was registered against Talwinder Singh under Section 406/420 IPC Police Station Lambra, Jalandhar Rural stating that petitioner had brought one dog of Pit-bull breed from Canada and handed over to the accused persons, thereafter he again came to India and brought another female dog of the same breed and handed over to the accused persons and it was settled between them that accused

persons shall keep two pups, for bearing the expenses of the pair of the dogs and rest pups shall be sold, the price of each pup is around ₹50,000/-, the accused party sold 15 pups and had misappropriated an amount of ₹8,00,000/-. On demanding dogs back and to render the account for the sale of pups, Talwinder Singh refused to render any account, and an FIR was lodged. The petitioner is an NRI and left for Canada and on return he came to know that an *ex-parte* inquiry was conducted and without notice to the petitioner, cancellation report was submitted in the Court and same was accepted. Thereafter, a Kalendra under Section 182 IPC (Annexure P-4) was filed in the Court. To discharge from the Kalendra proceedings (Annexure P-4) petitioner filed an application which was dismissed vide order dated 15.05.2019 (Annexure P-5) and the present petition under Section 482 Cr.P.C for quashing of Kalendra proceedings has been preferred by the petitioner.

3. On issuance of notice of motion, petition has been contested by the State.

4. Arguments heard.

5. It is contended by learned counsel for the petitioner that the petitioner preferred a lawful complaint to Senior Superintendent of Police, Jalandhar which was inquired by SP, Detective Jalandhar (Rural) and was reported to be false and thereafter the Kalendra No. 11/17 dated 05.07.2017 under Section 182 IPC was moved by the SHO Police Station Lambra, District Jalandhar (Rural) against the petitioner. He submits that as per Section 195 Cr.P.C this Kalendra could have been filed in Court either by

Senior Superintendent of Police, Jalandhar to whom the complaint was preferred or his superior officer. He submits that the impugned Kalendra is nothing but abuse of process of law, which is not sustainable in the eyes of law and as such the same is liable to be set aside. In support of his contention counsel for the petitioner has referred to the judgments cited as *P.D. Lakhani & Anr Vs. State of Punjab & Another 2008(2) RCR (Criminal) 838; Dr. Sham Lal Thukral Vs. State of Punjab 2009(3) RCR Criminal 168; CRM-M-9195 of 2008, titled as Balwinder Kaur vs. State of Punjab and Ors, Law Finder Doc Id#362787; CRM-M-19175 of 2016 titled as Kritika @ Preeti vs. State of Punjab; CRM-M-11277 of 2019 titled as Darshan Singh vs. State of Punjab; and CRM-M-15976 of 2021 titled as Inderjit Dhamija vs. State of Haryana.*

6. Per contra, learned counsel for the State has argued that the impugned Kalendra has been initiated against the petitioner under Section 182 IPC for supplying wrong information to the Police. He submits that false and baseless allegations have been levelled by the complainant, which on inquiry was found to be false and the Kalendra had been filed by the SHO under directions of the superior officers, as such there is no merit in the petition and the same deserves to be dismissed.

7. After considering the rival contentions and perusing the judgments referred in the light of the facts and circumstances of the present case, it transpires that petitioner filed a complaint to the Senior Superintendent of Police, Jalandhar dated 03.02.2012 is concerned the same is not disputed. It is also admitted fact that on inquiry therein, the SP,

Detective Jalandhar (Rural) had found complaint to be false. It is also a fact that the proceeding vide the present Kalendra, initiated under Section 182 IPC, has been presented by SHO Police Station Lambra, District Jalandhar (Rural). In the backdrop of these facts, the petitioner has challenged the Kalendra by proclaiming the same not being preferred by the authority to whom the complaint was preferred or his superior officer and as such the same is not sustainable in the eyes of law and hence is liable to be set aside.

8. In this regard reference is made to Section 195 Cr.P.C which reproduced as under:-

“195. Prosecution for contempt of lawful authority of public, for offences against the public justice and for offences relating to documents given in evidence. (1) No court shall take cognizance-
(a)(i) of any offence punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, 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;

9. Before proceeding further, it would be appropriate to have a glance on Provisions under Section 182 IPC which reads as under:-

“182. 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, with both.”

10. As stated above, it is admitted fact that in the present case the complaint was addressed to Senior Superintendent of Police, Jalandhar (Rural) , however, the impugned Kalendra/complaint was filed by SHO P.S. Lambra, who is subordinate to him.

11. In **P.D. Lakhani's case (supra)** the Hon'ble Apex Court, while discussing the applicability of Section 195 Cr.P.C. has categorically held that in a case where the criminal complaint is made to the Superintendent of Police who sent the same to the SHO and the SHO found the complaint to be false and filed a complaint under Section 182 IPC before the magistrate against the complainant, in such a circumstance the said complaint is liable to be dismissed as no complaint could be lodged by the SHO. It has been held therein that under Section 195 Cr.P.C. the complaint could be filed either by the Superintendent of Police or an officer superior to him and not by an inferior officer. Reliance has also been placed on the judgment of

Hon'ble Supreme Court in *State of U.P vs. Mata Bhikh and others, (1994) 4, SCC 95*.

12. Further, in the case of *Dr. Sham Lal Thukral's* case (supra) it has been held by this Court that when the complaint was made to the Senior Superintendent of Police, then filing of Kalendra under the signatures of the SHO, does not fulfill the requirement of law. Similar view have been taken by this Court in catena of other judgments including the judgments referred to above which could not controverted by the learned State counsel.

13. Applying the principles laid down in the judgments supra to the facts and circumstances of the present case, admittedly, in the present case the complaint was preferred by the petitioner to the Senior Superintendent of Police Jalandhar (Rural) which was entrusted to SP, Detective, Jalandhar (Rural) who inquired into the same and found the complaint to be false. Thereafter, the SHO PS Lambra, Jalandhar (Rural) has lodged the impugned Kalendra under Section 182 IPC before the Magistrate. In these circumstances, the impugned Kalendra/complaint was neither filed by the officer before whom it was preferred nor by the officer administratively superior to him, so, the Kalendra/complaint itself is not maintainable being a clear violation of the provisions contained in Section 195 Cr.P.C. The Senior Superintendent of Police or any officer superior to him could have filed the Kalendra under Section 182 IPC. So, continuation of proceedings on such Kalendra/complaint is sheer abuse of process of law and cannot be allowed to be continued being unsustainable in the eyes of law.

14. Consequently, in the light of the above discussion, finding

merits in the present petition the same is hereby allowed and the impugned Kalendra, Complaint No.11/17 DOI: 05.07.2017 (Annexure P-4) under Section 182 IPC, Police Station Lambra District Jalandhar (Rural) and subsequent proceeding arising out of the same against the petitioner is hereby quashed.

15. Petition is accordingly allowed.
16. Pending applications, if any, shall stand disposed of along with this judgment.

(SANJIV BERRY)

JUDGE

01.02.2024

Gyan	i)	Whether speaking/reasoned?	Yes
	ii)	Whether reportable?	Yes