

2024:PHHC:065821



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

296

CRM-M-49604-2021
Date of decision : 22.04.2024

Pawan Kumar Soni **Petitioner**

versus

State of Haryana and others **Respondents**

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sunil Sihag, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

Mr. Jagdeep Singh Bajwa, Advocate (Legal Aid Counsel)
for respondent No.3.

Ms. Pooja Chhabra, Advocate
for respondent No.3.

PANKAJ JAIN, J. (Oral)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner prays for quashing of Kalandra (Annexure P-4) initiated by Station House Officer, Ellenabad, District Sirsa under Section 182 read with Section 500 IPC.
2. Petitioner submitted complaint against Ish Kumar Mehta, Naresh Kumar and Atam Parkash to Deputy Superintendent of Police, Ellenabad. It is claimed that during the course of enquiry when both the parties were summoned by DSP, Ellenabad, they compromised their disputes and the petitioner withdrew his complaint on 06.07.2020. The complaint was thus closed. On 09.07.2020, one of the accused in the

2024:PHHC:065821



complaint submitted by the petitioner namely Naresh Kumar son of Bhagwan Dass submitted a complaint before DSP, Ellenabad on 09.07.2020 requesting that the FIR be registered against the petitioner for offences punishable under Sections 182 and 500 of IPC. On the said complaint, present Kalandra has been initiated by Station House Officer, Police Station Ellenabad. While assailing the Kalandra, counsel for the petitioner has relied upon provision as contained in Section 195 of the procedure code to submit that Station House Officer was not competent to present the Kalandra. The same being in violation of the bare provision of the Kalandra as well as subsequent proceedings cannot be allowed to proceed.

3. Reply has been filed by the State and has been claimed that the petitioner tried to mislead the police authorities by furnishing false and baseless information with an intent to injure respondent No.3 and thus Kalandra was rightly submitted before the competent Magistrate. It is not denied that the initial complaint filed by the petitioner was submitted before Deputy Superintendent of Police, Ellenabad whereas the Kalandra has been initiated by Station House Officer, who is an officer of the rank of Inspector.

4. Counsel for respondent No.3 has opposed the prayer made by the petitioner eloquently. She submits that law is settled that offence is complete under Section 182 of the Code as soon as accused moves before the public servant for action upon false information. Reliance is being placed upon ***Daulat Ram vs. State of Punjab AIR 1962 SC 1206***. Thus,

2024:PHHC:065821



compromise will not have an effect upon the offence committed by the petitioner which is punishable under Section 182 of the Penal Code. She further submits that as per the bare provision as contained under Section 154(3) of the Code, Superintendent of Police who receives complaint is empowered either to investigate the case himself or direct an investigation to be made by any police officer subordinate to him. She relies upon ***CBI vs. State of Rajasthan and another reported as (2001) 3 SCC 333*** to submit that when a superior police officer investigates the matter, he exercise the power as Officer Incharge of the police station.

5. Deputy Superintendent of Police while making enquiry on the allegations levelled by the petitioner was exercising power of Incharge of the Police Station and thus Officer Incharge of the Police Station SHO is empowered under Section 195 to present Kalandra.

6. I have heard rival contentions of the parties and have gone through the records of the case.

7. In order to appreciate the rival contentions made by counsel for the parties, it will be apposite to peruse Section 195 of the procedural code:-

“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,

2024:PHHC:065821



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 sub-clause (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.

2024:PHHC:065821



(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 the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

8. The Apex Court in the case of ***P.D.Lakhani & anr. Vs. State of Punjab & anr., cited as 2008(5) SCC 150*** while dealing with a 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 the 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

2024:PHHC:065821



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***

2024:PHHC:065821



95], stating :
"A cursory reading of Section 195(1)(a) makes out that in 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. Counsel for the private respondents is right in contending that under Section 154(3), Senior Superintendent of Police who receives complaint and opts to investigate the case himself, he has all the powers of Incharge of the Police Station vested with him, but that does not mean that the Officer Incharge of the Police Station can exercise the powers of Senior Superintendent of Police. Provision as contained in Sections 195 and 154 of the procedure code reiterate the principle of hierarchical supermacy.
10. A superior officer always empower to do what his inferior can but its not vice versa.
11. In view of above, present petition is allowed. Impugned Kalandra (Annexure P-4) and all proceedings subsequent thereto are hereby ordered to be quashed.

(PANKAJ JAIN)
JUDGE

22.04.2024

Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No