

Neutral Citation No.2024:PHHC:017557

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-47760 of 2022
Reserved on:06.02.2024
Pronounced on: 08.02.2024

FizaPetitioner

Vs.

State of Haryana and othersRespondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vishal Nehra, 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/ Rapat No.26 dated 04.08.2022 (Annexure P.2) registered under Section 182 IPC relating to Police Station Sadar Sonipat, District Sonipat and all other consequential proceedings arising therefrom.

2. Perusal of the paper book reveals that a complaint was made by the petitioner to Superintendent of Police, Sonipat alleging rape, molestation, beating and threat etc., against her father-in-law and other relatives, on the basis of which, FIR No.276 dated 14.06.2022 was registered at Police Station Sadar, Sonipat under Sections 354, 509, 323, 506, 376, 511, 120-B IPC (Annexure P1). On investigation, the complaint was found to be false. Consequent thereto, SHO Police Station Sadar, Sonipat prepared Kalendra bearing Rapat No.26 dated 04.08.2022 under Section 182 IPC against the petitioner on the allegations that she had made a false complaint to pressurize her in-laws.

3. The short submission made by learned counsel for the petitioner

is that the Kalendra in question as filed by SHO, Police Station Sadar, Sonipat 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 Superintendent of Police, Sonipat, 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 Superintendent of Police, Sonipat.

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/ Rapat No.26 dated 04.08.2022 (Annexure P.2) registered against the petitioner under Section 182 IPC relating to Police Station Sadar Sonipat, District Sonipat and all other consequential proceedings arising therefrom, are hereby quashed.

February 08, 2024
renu

(DEEPAK GUPTA)
JUDGE

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