



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

CRM-M-41511-2019
Reserved on 14.10.2024
Date of decision: 18.10.2024

Jaswinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Ravi Malhotra, Advocate for the petitioner.

Mr. Inderjeet Singh Ladher, DAG, Punjab.

Mr. Sandeep Kumar Sharma, Advocate
for respondent No.4.

KARAMJIT SINGH, J. (ORAL)

1. This petition is filed by petitioner under Section 482 Cr.P.C seeking quashing of Kalandra Annexure P-4 dated 07.04.2018 as well as summoning order Annexure P-5 dated 02.06.2018 passed by the Court of Sub Divisional Judicial Magistrate (in short 'SDJM'), Balachaur District Shaheed Bhagat Singh Nagar.

2. The brief facts of the case are that petitioner Jaswinder Kaur lodged complaint dated 26.10.2017 to SSP, Shaheed Bhagat Singh Nagar (in short 'SBS Nagar') for taking action against the accused persons including respondent No.4 Makhan Singh. In the said complaint, it was alleged that Gurdeep Kaur mother of the petitioner was having land dispute with the accused persons. The High Court also issued directions to protect life and liberty of Gurdeep Kaur, but the police authorities failed to take any action. On 26.10.2017, respondent No.4 accompanied by 40-50 unidentified persons forcibly cut the trees standing in the land of Gurdeep Kaur and they also kidnapped her (Gurdeep Kaur). FIR was registered on the basis of



aforesaid complaint. However, during investigation the allegations leveled in the complaint lodged by the petitioner, were found to be false. Police prepared a cancellation report and presented the same to the Court concerned after getting approval from the SSP SBS Nagar. Resultantly, Kalandra Annexure P-4 under Section 182 IPC was presented against the present petitioner on 02.06.2018. Taking cognizance of the same, SDJM, Balachaur summoned the petitioner vide order dated 02.06.2018 Annexure P-5. The petitioner being aggrieved by Kalandra Annexure P-4 and summoning order Annexure P-5, has filed the present petition.

3. In response to notice of motion, the present petition has been contested by the respondents.

4. Reply, filed on behalf of the State by way of affidavit of Davinder Singh, Deputy Superintendent of Police, Balachaur, District SBS Nagar was taken on record.

5. The counsel for the petitioner has *inter alia* submitted that Kalandra Annexure P-4 is not legally tenable. The complaint which was found to be false, was lodged by the petitioner to SSP, SBS Nagar, whereas Kalandra Annexure P-4 was presented under Section 182 IPC by SHO of Police Station Kathgarh, District SBS Nagar. He has further submitted that as per provision of Section 195 Cr.P.C, such Kalandra could have been filed in the Court either by SSP, SBS Nagar to whom the complaint was preferred or his superior officer. In support of his contention, counsel for the petitioner has referred to judgment of Hon'ble Supreme Court cited as ***P.D. Lakhani and another Vs. State of Punjab and another 2008 (2) RCR (Criminal) 838.***

6. The counsel for the petitioner has further argued that nothing is available on the record to show that the aforesaid cancellation report submitted by the police was ever accepted by the Court of Illaqa Magistrate concerned. That it being so, by saying that the complaint filed by the petitioner was found to be false, it amounts to pre-judging of the falsity of the allegations made by the petitioner in the complaint which was given by her to SSP, SBS Nagar. The counsel for the petitioner has further argued that the impugned Kalandra is nothing but an abuse of process of law and



deserves to be quashed.

7. Per contra, the State counsel and counsel for respondent No.4 contended that there is no illegality in Kalandra Annexure P-4, which is maintainable and is sustainable. It has been further contended that the cause of action accrued to the State to file Kalandra Annexure P-4, immediately when the police filed cancellation report. In this regard, counsel for respondent No.4 has relied upon the decision of this Court in ***Harbhajan Singh Bajwa Vs. Senior Superintendent of Police, District Patiala and another 2000 (3) RCR (Criminal) 94.***

8. It has been further argued on behalf of the State and respondent No.4 that Kalandra Annexure P-4 was filed under the direction and with the approval of SSP, SBS Nagar. That thus, the said Kalandra Annexure P-4 was filed in consonance with the mandate of Section 195 Cr.P.C.

9. On perusal of Kalandra Annexure P-4, it transpires that petitioner filed a complaint dated 26.10.2017 to the SSP, SBS Nagar with regard to kidnapping of her mother Gurdeep Kaur. On the basis of said complaint, FIR was registered, however during investigation, the allegations made in the complaint were found to be false and cancellation report was submitted in the said FIR. Resultantly, SHO, Police Station Kathgarh, Tehsil Balachaur, District SBS Nagar presented Kalandra Annexure P-4 under Section 182 IPC against the present petitioner.

10. The provision of Section 195 Cr.P.C read as follows:-

“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 other public servant to whom he is administratively subordinate”

11. Thus, it is evident that the complaint qua offence punishable under Section 182 IPC, as per provision of Section 195 Cr.P.C has to be maintained either by the public servant to whom such complaint was presented or an officer superior to him.



12. The State counsel as well as counsel for respondent No.4 while supporting the maintainability of Kalandra Annexure P-4 have submitted that the said Kalandra was presented by SHO, Police Station Kathgarh under the directions of SSP, SBS Nagar and after getting his specific approval in this regard. However, the Hon'ble Supreme Court in **P.D. Lakhani's case** (supra) while dealing with the similar proposition held as under:-

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 authorize 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 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."

13. In the light of the aforesaid settled position of law, it is clear that mandate of Section 195 Cr.P.C is that the complaint/Kalandra has to be



filed only by the public servant concerned or his superior officer. Such complaint cannot be maintained by an officer subordinate to said public servant and further such public servant is not competent to delegate its power provided under Section 195 Cr.P.C. So, the plea taken by the State counsel and the counsel for respondent No.4 that Kalandra Annexure P-4 is not suffering from any inherent procedural defect, as the same was filed under the direction and after getting proper approval from SSP, SBS Nagar, is not tenable.

14. In view of the above, finding merits in the present petition, the same is hereby allowed and impugned Kalandra Annexure P-4 and all the subsequent proceedings arising therefrom are hereby quashed against the petitioner.

15. Pending applications, if any, shall stand disposed of, in same terms.

18.10.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No