

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

CRR-2672-2022

Date of decision: 22.10.2024

Harwinder Singh

...Petitioner

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. M.K. Singla, Advocate the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

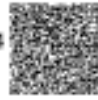
KARAMJIT SINGH, J. (ORAL)

1. This revision petition is filed by petitioner seeking setting aside of the judgment dated 06.10.2022 passed by the Court of Additional Sessions Judge, Sangrur vide which the appeal filed by the petitioner against the judgment dated 26.02.2019 passed by the Court of Judicial Magistrate Ist Class, Sunam whereby respondent No.2 Avtar Singh was acquitted in criminal case having Rapat No.24 dated 02.12.2014 under Section 182 IPC, Police Station Chhajli, was dismissed.

2. The brief facts of the case are that respondent No.2 Avtar Singh had moved applications before the SSP Sangrur against petitioner Harwinder Singh with regard to alleged scuffle which had taken place between both the parties. The matter was inquired into and the allegations made in the said applications were found to be false. Resultantly, SHO of the concerned police station presented Kalandra under Section 182 IPC against respondent No.2 Avtar Singh in the Court concerned.

3. On the basis of said Kalandra, notice was issued to respondent No.2 and on his appearance, notice of accusation under Section 182 IPC was served to respondent No.2. who pleaded not guilty.

4. Prosecution examined PW-1 Harwinder Singh, PW-2



Kameshinder Singh, PW-3 Jagsir Singh, PW-4 ASI Jaswinder Singh, PW-5 HC Manjit Singh, PW-6 Sewa Singh Malli, SP(D) Sangrur, PW-7 Inspector Bhupinder Singh (Retd.), PW-8 SI Balwant Singh and PW-9 HC Manjit Singh.

5. Statement of respondent No.2 was recorded under Section 313 Cr.P.C. He pleaded innocence. However, respondent No.2 did not lead any evidence in his defence.

6. After hearing the counsel for the parties, the learned trial Court acquitted respondent No.2 vide its judgment dated 26.02.2019, after taking into consideration the fact that the Kalandra presented by the SHO is not maintainable as per the provisions of Section 195 Cr.P.C as in the present case., the complaint which was found to be false was lodged by respondent No.2 with the SSP concerned.

7. Being aggrieved, petitioner filed appeal which was also dismissed by the Court of Additional Sessions Judge, Sangrur vide judgment dated 06.10.2022 while upholding the findings recorded by the trial Court.

8. The present revision petition has been filed by the petitioner challenging the judgments dated 26.02.2019 and 06.10.2022 passed by the Courts below.

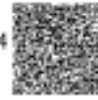
9. I have heard the counsel for the parties.

10. The counsel for the petitioner contends that there is no illegality or procedural defect in Kalandra which is legally tenable. It has been further contended that Kalandra was filed under the direction and supervision of the SSP concerned, in consonance with the mandate of Section 195 Cr.P.C.

11. The counsel appearing on behalf of the State also argued on the same lines.

12. I have considered the submissions made by counsel for the petitioner.

13. Admittedly, in the instant case, the complaint which was found to be false, was lodged by the respondent No.2 Avtar Singh to the SSP concerned, whereas Kalandra in question was presented under Section 182



IPC by SHO of the Police Station concerned.

14. The provision of Section 195 Cr.P.C reads 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”*

15. 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.

16. The counsel for the petitioner while supporting the maintainability of Kalandra has submitted that the said Kalandra was presented by SHO of Police Station concerned under the directions of SSP, Sangrur and after getting his specific approval in this regard. However, the Hon’ble Supreme Court in ***P.D. Lakhani and another Vs. State of Punjab and another 2008 (2) RCR (Criminal) 838*** 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."

17. 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 counsel for the petitioner that Kalandra is not suffering from any inherent procedural defect, as the same was filed under the direction and after getting proper approval from SSP, concerned is not tenable.

18. In view of the above, the counsel the petitioner has failed to point out any illegality or perversity in the impugned judgments.

19. Consequently, this revision petition is hereby dismissed being devoid of merits.

22.10.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No