



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

CRM-M-8531-2023 (O&M)
Reserved on 25.11.2024
Date of decision: 17.01.2025

R.K. Joshi

...Petitioner

Versus

State of Punjab and Another

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Petitioner in person along with
Mr. Abhimanyu Kalsy, Advocate for the petitioner.

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

KARAMJIT SINGH, J. (ORAL)

1. The instant petition is filed by the petitioner under Section 482 Cr.P.C. seeking quashing of Kalandra (Annexure P-1) filed vide Rapat No.33 dated 05.09.2017, summoning order (Annexure P-3) dated 05.09.2017 passed by the Court of Additional Chief Judicial Magistrate, SBS Nagar and order dated 07.01.2023 (Annexure P-20) passed by the Court of Additional Sessions Judge, SBS Nagar, whereby the revision petition filed by the petitioner against summoning order Annexure P-3 was dismissed.

2. The brief facts of the case are that petitioner lodged complaint Annexure P-11 dated 24.06.2014 with the Senior Superintendent of Police, SBS Nagar (in short 'SSP, SBS Nagar') against Harshvardhan and Vijay Gautam and others wherein he alleged that aforesaid persons fabricated one agreement to sell dated 26.03.2011 (Annexure P-12) purported to be executed by Ravi Gautam (since deceased) in favour of Harshvardhan son of Vijay Gautam. As the police failed to take any action on the basis of



complaint Annexure P-11, the petitioner kept on sending reminders Annexure P-43 to Annexure P-52. As per police, the matter was inquired into and the allegations made in the complaint were found to be false. Resultantly, Kalandra (Annexure P-1) was presented by Inspector/SHO Police Station City Nawashahar coupled with written complaint Annexure P-2 made by SSP, SBS Nagar, under Section 182 IPC against the petitioner before the Court concerned, which entertained the same and passed summoning order (Annexure P-3) dated 05.09.2017.

3. The petitioner filed revision petition to challenge the aforesaid proceedings. However, the revisional Court dismissed the said revision petition vide order dated 07.01.2023 (Annexure P-20).

4. Being aggrieved, the petitioner has filed the present petition to challenge Kalandra Annexure P-1, summoning order Annexure P-3 and the order passed by revisional Court dated 07.01.2023 Annexure P-20.

5. In response to notice of motion, the present petition has been contested by both the respondents. Short reply by way of affidavit of Ranjit Singh, Deputy Superintendent of Police, Sub Division Nawashahar, SBS Nagar, filed on behalf of respondents was placed on record.

6. The counsel for the petitioner has *inter alia* contended that the complaint Annexure P-11 was addressed to SSP, SBS Nagar while Kalandra Annexure P-1 was presented by SHO of Police Station City Nawashahar. He has further submitted that as per provision of Section 195 Cr.P.C, Kalandra could have been filed in the Court either by SSP, SBS Nagar to whom the complaint was preferred or his superior officer. It has been further submitted that SSP, SBS Nagar was having no authority to delegate the aforesaid power under Section 195 Cr.P.C to his junior official. It has been further contended that thus, the subsequent complaint Annexure P-2 lodged by SSP, SBS Nagar is of no consequence. In support of his contention, the counsel for the petitioner has referred to decision of Hon'ble Supreme Court in ***P.D. Lakhani and another Vs. State of Punjab and another 2008 (2) RCR (Criminal) 838.***

7. The counsel for the petitioner has further argued that police did not properly inquired into the matter regarding fakeness of agreement to sell



dated 26.03.2011. The report of hand writing expert which was relied upon by the petitioner was not taken into consideration by the police. During inquiry, police officials also failed to take opinion of any other hand writing expert to verify the facts of complaint Annexure P-11. Thus, no offence under Section 182 IPC is made out against the petitioner.

8. The counsel for the petitioner has further argued that as police failed to take any action against Harshvardhan and others, on the basis of complaint Annexure P-11, the complainant approached the area Magistrate concerned by moving an application under Section 156 (3) Cr.P.C Annexure P-14, wherein the proceedings were stayed by this Court. The counsel for the petitioner has further submitted that in this manner, application under Section 156 (3) Cr.P.C filed by the petitioner is still pending. It being so, there was no occasion for the police to file Kalandra Annexure P-1 or complaint Annexure P-2 against the petitioner under Section 182 Cr.P.C, during the pendency of application Annexure P-14 moved by the petitioner under Section 156 (3) Cr.P.C.

9. On the other hand, the State counsel has *inter alia* argued that the complaint Annexure P-11 and subsequent complaints/reminders given by the petitioner to SSP, SBS Nagar were found to be false and resultantly, Kalandra Annexure P-1 was prepared and presented by SHO concerned, which was supported by separate complaint Annexure P-2 lodged by SSP, SBS Nagar in the Court concerned. It has been further argued that it being so, aforesaid Kalandra and complaint were properly presented before the Court concerned, in accordance with the mandatory provision of Section 195 Cr.P.C. So, Kalandra Annexure P-1 and complaint Annexure P-2 are legally maintainable. That there is no illegality or infirmity in the summoning order Annexure P-3 passed by the trial Court on the basis of Annexure P-1 and Annexure P-2. It has been further argued that even order Annexure P-20 dated 07.01.2023 passed by the revisional Court is not suffering from any illegality or perversity. It has been further argued that the law laid down by Hon'ble Supreme Court in ***P.D. Lakhani's case (supra)*** is not applicable to the case in hand.

10. I have considered the submissions made by counsel for the



parties.

11. From the perusal of (Annexure P-11), it appears that petitioner lodged complaint dated 24.06.2014 against Harshvardhan and Vijay Gautam and others wherein it was alleged that aforesaid persons forged one agreement to sell dated 26.03.2011 (Annexure P-12) stated to be executed by Ravi Dutt Gautam son of Late Mukand Nabh Gautam, resident of Nawashahar, in favour of Harshvardhan son of Vijay Gautam resident of Nawashahar with regard to his immovable property situated in the revenue estate of Nawashahar and village Karyam-1, Tehsil Nawashahar. The said complaint Annexure P-11 was addressed to SSP, SBS Nagar (Nawashahar). From the perusal of Annexure P-1 and P-2, it is apparent that the complaint in question and concerned reminders given by the petitioner were addressed to SSP, SBS Nagar. Further, as per prosecution, the said complaints were inquired into by gazetted police officers of the rank of Superintendent of Police or Deputy Superintendent of Police. From the perusal of Annexure P-1, it is evident that Kalandra dated 07.06.2017 was prepared and presented by SHO, Police Station City Nawashahar against the petitioner under Section 182 IPC, on the ground that the allegations made by the petitioner in complaints in question were found to be false. After going through Annexure P-2, it appears that SSP, SBS Nagar also lodged separate complaint under Section 195 Cr.P.C. against the present petitioner, on the ground that the complaints lodged with SSP, SBS Nagar by the petitioner against Harshvardhan were inquired into and it was found that the land of one Ravi Dutt at Nawashahar claimed by the petitioner had no connection with him. From the perusal of order Annexure P-3, it appears that Kalandra in question was presented on 05.09.2017 and on the same day, notice to the petitioner being accused in the said Kalandra was issued for 23.10.2017.

12. Before proceeding ahead with the factual aspects of the case, it will be apt to discuss the provision of Section 195 Cr.P.C which 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.”

13. As per the said statutory provision, the complaint qua offence punishable under Section 182 IPC has to be maintained either by the public servant to whom such complaint was presented or an officer superior to him and in case of non compliance of procedure prescribed under Section 195 Cr.P.C, the prosecution against the accused person would be, rendered void ab-initio. In this regard, reference be made to decision of Hon’ble Supreme Court in ***Saloni Arora Vs. State of NCT of Delhi 2017 (1) RCR (Criminal) 584***. Further, it is settled position of law, the public servant concerned has got no authority to delegate the said power to his subordinate, as has been held by the Hon’ble Supreme Court in ***P.D. Lakhani’s case (supra)***, wherein it was 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."



14. Now reverting back to the facts of the present case, it is not disputed that complaint Annexure P-11 was addressed to SSP, SBS Nagar while Kalandra (Annexure P-1) was presented by SHO, Police Station City Nawashahar. The State counsel has placed reliance upon complaint Annexure P-2 lodged by SSP, SBS Nagar with regard to offence under Section 182 IPC against the present petitioner, to show that there is no violation of mandatory provision of Section 195 Cr.P.C. The revisional Court while passing order dated 07.01.2023 (Annexure P-20), was also of the same view, which is not tenable, for the following reasons:-

From the perusal of the complaint (Annexure P-2), it could be easily made out that the vivid facts of the case were not given in the said complaint. The details of the complaint (Annexure P-11) dated 24.06.2014 submitted by the present petitioner and that of agreement to sell dated 26.03.2011 (Annexure P-12) are not there in complaint (Annexure P-2). Further, complaint (Annexure P-2) is silent with regard to the allegations of forgery and fraud pertaining to agreement to sell (Annexure P-12), made by the petitioner, in his complaint Annexure P-11 dated 24.06.2014. The State has failed to produce any order of the trial Court whereby the said complaint Annexure P-2 was separately entertained by the said Court. Order Annexure P-3 passed by the Court concerned reveals that Kalandra was presented before the said Court on 05.09.2017 and notice to the petitioner was issued for 23.10.2017. In the given circumstances, as the allegations made in the complaint Annexure P-2 are bereft of details, rendering complaint Annexure P-2 vague and obscure. Thus, the said complaint Annexure P-2 is not legally tenable.

15. Further, from the perusal of Annexure P-2, it appears that the SSP, SBS Nagar while endorsing the contents of Kalandra Annexure P-1, made prayer to the Court concerned that he being busy with his official engagement is not able to appear before the Court on each and every date. All these aspects indicates that complaint Annexure P-2 was filed by concerned SSP under Section 195 Cr.P.C in a casual manner without spelling out the exact allegations against the present petitioner. As SSP (SBS Nagar) vide complaint Annexure P-2, has just endorsed the Kalandra Annexure P-1, without giving precise and accurate description of the allegations in the



complaint (Annexure P-11) made by the petitioner, it could be easily made out that SSP concerned delegated his powers to SHO, Police Station City Nawashahar, without having any authority to do so in the light of the law laid down by Hon'ble Supreme Court in **P.D. Lakhani's case (supra)**. It being so, Kalandra Annexure P-1 presented by an officer subordinate to SSP, SBS Nagar is not legally maintainable against the petitioner, being suffering from inherent procedural defect, as the same was to be filed by SSP, SBS Nagar or by his superior officer, as per the provision of Section 195 Cr.P.C.

16. It appears that complaint Annexure P-11 dated 24.06.2014 was disposed of by the police authorities in a casual manner without passing any speaking order to the effect that the contents of the said criminal complaint were found to be false. It has also come on the record, when the police failed to take any action in the subject matter in question on the basis of complaint Annexure P-11, the petitioner filed an application under Section 156(3) Cr.P.C. with direction to the police to register FIR and then to investigate the matter. The said application is still pending. So, nothing is available on the record to establish that the allegations made in complaint Annexure P-11 dated 24.06.2014 were inquired into and found false by the police. Thus, the prosecution has *prima facie* failed to establish that offence under Section 182 IPC has been committed by the petitioner.

17. In light of the above discussion, Kalandra Annexure P-1 and complaint Annexure P-2 are not legally tenable. The present petition is hereby allowed and Kalandra Annexure P-1, order dated 05.09.2017 Annexure P-3 passed by the Court of Additional Chief Judicial Magistrate Ist Class, SBS Nagar and order dated 07.01.2023 Annexure P-20 passed by the revisional Court are quashed against the petitioner along with all the subsequent proceedings arising therefrom.

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

17.01.2025

YOGESH

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No