

(2019) 09 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 37015 Of 2019 (O&M)

Pankaj @ Pankaj Kumar Rai And Others

APPELLANT

Vs

State Of Haryana

RESPONDENT

Date of Decision : 11-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 193, 194, 195, 195(b), 195(1)(a), 196, 463, 471, 475, 476, 482

Indian Penal Code, 1860 — Section 182, 332, 343, 353

Citation : (2019) 09 P&H CK 0064

Hon'ble Judges : Anil Kshetarpal, J

Bench : Single Bench

Advocate : Shyam Manohar

Final Decision : Dismissed

Judgement

Anil Kshetarpal, J

Through present petition filed under Section 482 Cr.P.C, petitioners pray for issuing directions/ orders to secure ends of justice and to prevent abuse of the process of law.

Fundamental issue which arises for consideration is whether protection under Section 195 Cr.P.C is also available to the accused who are not public servants.

Some facts are required to be noticed. FIR has been lodged by officials of Service Tax Department alleging that when they went for search of the premises being run by the accused-petitioners namely M/s World Laparoscopy Hospital Cyber City, DLF Phase II, Gurgaon on 21.3.2017 on the strength of visit authorization issued by their superior officials for the purpose of inquiry regarding payment of service tax, the members of team were manhandled, obstructed and illegally confined. FIR in this regard was registered on 22.3.2017. Investigating agency after completing the investigation filed report under Section 173 Cr.P.C. Learned

Trial Court after finding prima facie case, framed charges against the petitioners.

This petition has been filed at this stage calling upon this Court to set aside final report, charges framed on the ground that the Judicial Magistrate, First Class could not have taken cognizance as it is in violation of mandatory provision of Section 195 Cr.P.C.

At this stage, it would be appropriate to extract Section 195 Cr.P.C, which is reproduced as below:-

"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;

(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.

(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 ordinary 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"

It is apparent that Section 195 Cr.P.C is applicable if the prosecution is for contempt of lawful authority of public servants for offences against public justice or for offences relating to documents given in evidence. In other words prosecution under the offences listed under Section 195 Cr.P.C cannot be initiated against public servants unless procedure as laid down in Section 195 Cr.P.C is followed. Procedure prescribes that such complaint should be in writing by the public servant concerned or any other public servant to whom he is administratively subordinate. Clause (b) of Section 195 Cr.P.C deals with the powers of the Court where the offence as listed in clause (b) have been committed concerning a Court.

The aforesaid protection under Section 195 Cr.P.C is not available to accused who are not the public servants. In fact from bare reading of Section 195 Cr.P.C it is apparent that such protection is available to public servants only.

Learned counsel for the petitioners relied upon the judgment passed by the Hon'ble Supreme Court in the case of Daulat Ram vs. State of Punjab, Criminal Appeal No.126 of 1960, decided on 25.01.1962. He submitted that Hon'ble Supreme Court has interpreted Section 195 (1)(a) of Cr.P.C and it has been laid down that no Court shall take cognizance of the offences listed in Section 195 Cr.P.C unless the Court is moved by appropriate public servant. This Court has carefully read the judgment passed in the case of Daulat Ram (supra). In the aforesaid judgment, appellant was working as a Patwari (a public servant). He wrote a letter to his superior i.e Tehsildar against certain individual alleging that he has been beaten up and robbed of certain official papers and the money. The aforesaid complaint was forwarded by the Tehsildar to Sub Divisional Officer who turn sent it to the police. The police on inquiry found that the allegations made in the complaint by the Patwari were false. Police launched a prosecution against the aforesaid Patwari-Daulat Ram under Section 182 IPC. In the aforesaid

context, Hon'ble Supreme Court held that such prosecution could not be launched against a public servant without application in this regard was moved by the appropriate public servant. In view of the aforesaid, the judgment passed by the Hon'ble Supreme Court is not applicable to the facts of the present case.

Next submission of the learned counsel for the petitioners is that the offences under Sections 332, 343, 353 IPC are not made out.

At this stage, this Court is not inclined to examine the aforesaid issue lest it may prejudice the trial of the case. Petitioners would be well advised to take up the defence based upon aforesaid submission before the trial Court.

In view of the aforesaid discussion, there is no ground to exercise jurisdiction under Section 482 Cr.P.C is made out. Hence, dismissed.