

(2012) 09 DEL CK 0256
In the Delhi High Court
Case No : Criminal M.C. 2610 of 2012

Prabhash Kumar Singh

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 210, 482
Penal Code, 1860 (IPC) — Section 182, 323, 34, 365, 380

Citation : (2012) 09 DEL CK 0256

Hon'ble Judges : Pratibha Rani, J

Bench : Single Bench

Advocate : Rajdipa Behura, APP for State - R-1 and Mr. Nitesh Kumar Singh, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Rani, J.

CRL.M.C.2610/2012

1. The petitioner is feeling aggrieved as while submitting closure report in the case FIR No. 594/2004, PS Timar Pur registered on the basis of statement made by him, Kalandra was filed against him u/s 182 IPC. As per the contents of the FIR No. 594/2004 registered at PS Timar Pur u/s 365 IPC, petitioner Prabhash Kumar reported that he alongwith his wife Rohita Chakma was staying at B-2, Gandhi Vihar. They got married in Arya Samaj Mandir a day before in the presence of Anthony, Hemant and Sanjeev. He further informed that some people knocked his door in the night. When he opened the door, he and his wife both were given beating. They had taken away his wife as well Rs. 20,000/-, one gold chain and

two mobile phones.

2. In the FIR, he also mentioned that the people who came to his house, belong to the same (native) place to which his wife belongs and named

them as Rajiv Chakma, Sujiv Chakma, Ronald, Sumesh, Henry and Sonadan. He requested for appropriate action against them.

3. During investigation, statement of Rohita Chakma was recorded wherein she stated that on 18.12.2004 Prabhash Kumar Singh i.e. the

petitioner asked her to go to temple in the afternoon. When she tried to flee from that place, Prabhash Kumar and his two friends caught her and

threatened to kill her and took her to a Hindu Temple near ISBT and put Sindoor on her forehead and there was no witness of this marriage from

her family or the Community. She further stated that on the same evening, Prabhash Kumar alongwith his fifteen friends went to the houses of

North-East students living in Gandhi Vihar as he wanted to make one of the Chakma boys a witness to the marriage. Since the Chakma boys

refused to become witnesses, Prabhash and his friends gave beatings to them and tried to take the girl (her) alongwith him after threatening her.

Then she spoke in her Chakma language to those North-East boys to come to her rescue and save her life. After that, Prabhash Kumar Singh took

her to his flat B-2, Gandhi Vihar. When all the friends of Prabhash Kumar left his house, during the night time some boys of North-East came to his

flat and she fled away alongwith them to save her life.

4. On 11.02.2005, the cancellation report was submitted before the Court by SI Amarpal Singh. The Court accepted the cancellation report

without any notice to the complainant.

5. Along with the cancellation report, a kalandra u/s 182 IPC was also filed against the complainant Prabhash Kumar Singh on the ground that in

view of statement made by Rohita Chakma the complaint filed by him was proved to be false.

6. The Court took cognizance against the petitioner on the same day for committing the offence punishable u/s 182 IPC. On being informed by the

IO that Prabhash Kumar Singh was absconding in case FIR No. 32/2005, PS Timar Pur and on the application moved separately by the IO,

NBW was sought to be issued against him, the learned MM also ordered for issuance of bailable warrant against the petitioner to be executed

through IO SI Amarpal Singh.

7. The complainant also filed a complaint case in respect of the incident reported vide FIR No. 594/2004. The learned MM was of the view that

since FIR No. 594/2004 had already been registered in respect of the said incident and investigation was in progress, the complaint was liable to

stayed u/s 210 Cr.P.C. and file was ordered to be put up on 04.04.2005 with directions to summon the IO of case FIR No. 594/2004 with

progress report of the investigation.

8. As reflected from the proceedings dated 11.02.2005 referred to above, despite the order dated 12.01.2005 in the complaint case, while

submitting the investigation report on 11.02.2005, the IO did not bring the complete facts to the notice of the Court. The complainant being

already directed to appear on 04.04.2005, had no occasion to appear before the Court on 11.02.2005 when cancellation report was submitted

and accepted at his back without even giving him an opportunity to file protest petition. Not only that, on the same day cognizance was also taken

by the Court against him for committing the offence punishable u/s 182 IPC.

9. The question that arises for consideration is whether the action of the IO in filing a kalandra u/s 182 IPC against the complainant was justified

and whether at the time of taking cognizance, the Court considered whether the ingredients of Section 182 IPC were satisfied.

10. Here it is worth mentioning that in the statement made by Rohita Chakma, she admitted the fact of marriage like ceremony with the petitioner in

Mandir. She also admitted her presence at the house of the complainant. She also admitted that some boys did enter the house of the complainant

on that night and she had accompanied those boys belonging to her community.

11. Thus the incident as reported by the complainant on the basis of which FIR No. 594/2004 was registered, was substantially not disputed by

Rohita Chakma, it being a case where the petitioner allegedly married a girl from North-East Chakma Community in a Mandir and just immediately

next day after the marriage, in the night some boys from the Community to which Rohita Chakma belonged, entered the house of the complainant

and his alleged wife had gone with them, by no stretch of imagination, the IO could have arrived at the conclusion that a false information was given

to him to use his lawful authority to the injury of another person so as to initiate

proceedings against the complainant u/s 182 IPC.

12. It is worth mentioning here that in the complaint case No. 101/2005 filed by the petitioner against the respondent, on the same allegations on

which cancellation report was submitted by the IO, the learned MM observed as under:-

The vital fact is that the aforesaid persons barged inside his house with intention to take away Rohita Chakma and in furtherance of the same they

took away the articles specified. In my opinion, the aforesaid facts are reflecting prima facie commission of offence u/s 380 IPC and not to Section

395 IPC as is sought by the complainant. However, there is sufficient material to summon the accused Mr. and Mrs. Gana Chandra Chakma,

Rajiv Chakma, Sujiv Shakma, Ronald Chakma, Suman Chakma, Satiush Chakma, Sonadan, Henry for committing the offence punishable under

Sections 380/ 458/323/ 34 IPC as the facts that the aforesaid accused in furtherance of their common intention barged in the house of complainant

and caused simple hurt to him as is reflected in the MLC are corroborated.

13. Thus, on the same allegations as recorded vide FIR No. 594/2004, the Court ordered for issuance of summons against Mr. and Mrs. Gana

Chandra Chakma, Rajiv Chakma, Sujiv Shakma, Ronald Chakma, Suman Chakma, Satiush Chakma, Sonadan, Henry for committing the offence

punishable under Sections 380/ 458/ 323/ 34 IPC which further shows that the complainant had not given any false information so as to prosecute

him for committing an offence punishable u/s 182 IPC.

14. In the recent case of Tara Devi Vs. State of Haryana and Others the High Court of Punjab and Haryana, while dealing with a similar issue,

observed :

An identical question came to be decided by this Court in cases Ramesh Chand vs. State of Haryana, 2006(4) RCR (Cri) 718 and Kehar Singh

vs. State of Punjab CRM No. M-7093 of 2009 decided on 25.10.2010. Having considered the matter deeply, it was ruled that once the

petitioner has filed a private complaint and the accused have been summoned, then it cannot be said that the information supplied by the petitioner

was false.

15. It is submitted by the petitioner as well as learned APP for State that after an amicable settlement arrived at between the petitioner and Rohita

Chakma, the proceedings in the complaint case stands quashed by this Court vide order dated 24.04.2009.

16. It is a case where the petitioner allegedly married Rohita Chakma on 18.12.2004 at Arya Samaj Mandir, Yamuna Vihar and marriage

certificate was also obtained on 20.12.2004 as reflected in the order dated 05.04.2006 in CC No. 101/2005. On the very next day, this

occurrence had taken place as the bride was belonging to Chakma Tribe and her marriage with the petitioner appeared to be to the disliking of the

people of her Community.

17. After the settlement between the petitioner and Rohita Chakma to whom he married, all the proceedings have been quashed except this

Kalandra u/s 182 IPC against the present petitioner. Section 182 IPC reads as under :-

"182. False information, with intent to cause public servant to use his lawful power to the injury of another person. -Whoever gives to any public

servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause,

such public servant -

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given

were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

Shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one

thousand rupees, or with both.

18. The interpretation of Section 182 IPC has been succinctly elaborated in the case of Fakirappa Ningappa Chikkabagewadi vs. The State 1960

Cr.L.J 1113, wherein the High Court of Karnataka, while dealing with an identical issue, observed as under:-

This position of the law is correctly stated in AIR 1930 54a (Lahore) In that case, His Lordship Tek Chand J. quoted with approval the remarks

made by Plowden J. in Murad v. Empress 29 Pun Re 1894 Cr. which are as follows:-

It is not enough to find that he has acted in bad faith, that is, without due care

or enquiry, or that he has acted maliciously, or that he had no sufficient reason to believe or did not believe the charge to be true. The actual falsity of charge, recklessness in acting upon information without testing it, or scrutinizing its sources; actual malice towards the person charged they are relevant evidence more or less cogent, but the ultimate conclusion must be, in order to satisfy the offence, that the accused knew that there was no just or lawful ground for proceeding. It may be difficult to prove this knowledge, but however difficult it may be, it must be proved and unless it is proved the informer must be acquitted.

Same is the view taken by the Madras High Court in the case of Rayan Hutti v. Empreror ILR 26 Mad 640. In that case the learned Judges observed:

To constitute an offence u/s 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed to be false. The fact that an information is shown to be false does not cast upon the party who is charged with an offence under the section the burden of showing that, when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false.

19. The summoning order dated 05.04.2006 makes it clear that the allegations made in FIR No. 594/2004 were not false, rather the learned MM considered the material on record to be sufficient to proceed against Mr. and Mrs. Gana Chandra Chakma, Rajiv Chakma, Sujiv Shakma, Ronald Chakma, Suman Chakma, Satiush Chakma, Sonadan, Henry for committing the offence punishable under Sections 380/ 458/ 323/ 34 IPC. Filing of kalandra u/s 182 IPC against the petitioner while submitting the cancellation report especially when the incident was not disputed by Rohita Chakma in her statement, launching prosecution u/s 182 IPC was in gross abuse of the process of law.

20. In the case Indu Jain and Another Vs. N.C.T. of Delhi and Others, it was held as under :-

9. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others Vs. Ch. Bhajan Lal and

others, this Court examined the extraordinary power under article 226 of the Constitution and also the inherent powers u/s 482 of the Code and

held that such powers could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of

justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines

could not be inflexible or rigid and were to be applied after consideration of the facts and circumstances of each case. One of such guideline was

where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do

not prima facie constitute any offence or make out a case against the accused, then the High Court could exercise its inherent jurisdiction to quash

the proceedings.

21. In the case *Narcotics Control Bureau Vs. Rakesh Dwivedi*, it was held as under :

In appropriate cases, inherent power of the High Court, u/s 482 can be invoked to make such orders, as may be necessary, to give effect to any

order under the Code of Criminal Procedure or to prevent abuse of the process of any Court, or otherwise, to secure the ends of justice. The

power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court

becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or

proceedings. In appropriate cases, the High Courts have exercise their jurisdiction u/s 482 Code of Criminal Procedure for quashing of first

information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power

can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution

Bench in *A.R. Antulay*'s case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear

that even apart from Article 21, the Courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending

for too long and putting to an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.

22. Since the averments made in the FIR No. 594/2004, PS Timar Pur were not found to be false, which is clear from the fact that in the complaint case filed on the same averments, the Court ordered for summoning of accused persons named therein and not only that in the proceedings dated 09.05.2005, the learned MM has also observed that acceptance of the cancellation report, on the representation of the IO that complainant was absconding, was wrong. The Court not only observed that the Court has no hesitation in accepting this mistake but also ordered that complainant may inspect the file and address the arguments on the said cancellation report and if deemed fit, matter can be reconsidered and sent for further investigation. These facts clearly bring on record that basic ingredients to constitute the offence punishable u/s 182 IPC were not satisfied in this case and the order summoning the accused person was bad.

23. In view of the above discussion, the Kalandra filed u/s 182 IPC against the petitioner Prabhash Kumar Singh and all the proceedings arising therefrom are quashed.

CRL. REV. P. 660/2006

24. Petitioner, who himself is an advocate, seeks leave to withdraw the present revision petition.

25. Leave granted. Accordingly, Crl. Rev. P. 660/2006 is dismissed as withdrawn.