

(2015) 04 P&H CK 0155

In the Punjab And Haryana At Chandigarh

Case No : Criminal Misc. No. M-19336 of 2012 (O&M)

Rattan Singh Matoria and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 156(3), 182, 195
Penal Code, 1860 (IPC) — Section 172, 173, 174, 175, 176

Citation : (2015) 04 P&H CK 0155

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : J.S. Berwal, Atul Lakhanpal, Senior Advocate and R.S. Chahal, for the Appellant; C.S. Bakhshi, A.A.G, Haryana, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—This petition under Section 482 Cr.P.C. is for quashing of calendar dated 04.05.2012 (P-1) filed by the respondents under Section 182 IPC before the Judicial Magistrate Ist Class, Rohtak vide Crl. Case No. 5 dated 05.05.2012.

2. F.I.R. No. 407 dated 21.07.2010 was got registered by Balvir Singh against Baljeet Singh at P.S. Civil Lines Rohtak and on investigation, the case was closed on 15.11.2010. Again F.I.R. No. 475 dated 25.9.11 u/s. 420/448/188 IPC was registered in P.S. Rohtak against Baljeet Singh, which was also found false and was closed vide report dated 7.4.2012 by which it was found that Rattan Singh, Balvir Singh etc. by giving repeated false applications and by filing suits, misled the Courts and police. Hence the calendar under Section 182 IPC was submitted in the Court against defendants.

3. Learned counsel for the petitioner is seeking quashing of the above said calendar and the notice (P-7) on the ground that they are against the provisions of Section 195 Cr.P.C. The complaints had been made to IGP and to the learned Judicial Magistrate under Section 156(3) Cr.P.C. and therefore, SHO Urban Estate

Rohtak cannot file the impugned calendar , as IG Police is not subordinate to him.

4. To support the contention, reference has been made to the plethora of judgments passed by Hon"ble the Supreme Court as well as by this Court in a case of Daulat Ram Vs. State of Punjab, AIR 1962 SC 1206 : (1962) 2 SCR 812 Supp , Kulwant Kaur and others v. State of Punjab, passed in CRM-M-44790 of 2007, decided on 11.12.2009, Randhir Vs. The State of Haryana and Others, (2004) CriLJ 479 , Malkiat Singh v. State of Haryana, 1992 (2) RCR CrI 10 , Kulwinder Kaur Vs. State of Punjab and Others and Davinder Singh v. State of Punjab, 1991)1) RCR (CrI) 149.

5. A reply has been filed by DSP (City) Rohtak on behalf of respondent-State giving the background of the dispute that Smt. Sushila Devi was owner in possession of land 10 kanal 14 marla by way of three different sale deeds in 1979-80 situated at Sheela Bye Pass, Rohtak in the revenue estate of village para, Rohtak. This property was self acquired property. Thereafter, late Smt. Sushila Devi transferred some of land to their family members including petitioner Nos. 1, 2 and 3 vide Court decrees in 1992 and 93 vide civil suit No. 542 dated 21.11.1992 and civil suit No. 171 dated 20.04.1993. The total land transferred by above mentioned decrees and transferred/sold to different vendees is about 03 kanal 5 marla and she remained owner in possession of 7 kanals 9 marlas of the land. The mutations were not sanctioned in the name of the petitioners. So, the whole land stood in the name of Smt. Sushila Devi in the revenue record. Thereafter, Smt. Sushila Devi executed a gift deed in her life time vide gift deed No. 2273/1 dated 10.06.2008 to her son Baljeet, she executed the gift in relation to whole of the land by mistake and when this mistake came to the notice of Smt. Sushila and Baljeet, they furnished their affidavits to Tehsildar/Sub-Registrar on 14.07.2008 in order to rectify the mistake and to execute supplementary gift deed. The affidavit duly attested by Tehsildar dated 14.07.2008 and another affidavit attested by notary public dated 18.07.2008 and on an application supported with affidavits dated 21.07.2008 was presented to the Sub Registrar for executing supplementary gift deed in the above mentioned fit 7 kanal 9 marla of land instead of 10 kanal 14 marla of land.

6. Petitioner Nos. 2 and 3 filed civil suit No. 414 dated 18.07.2008 against Baljeet and Sushila challenging therein the gift deed No. 2273/1 dated 10.06.2008 and move an application under order 39 rule 1 and 2 read with Section 151 CPC in that suit on that an order was passed on 17.09.2008 (R-1) and an appeal was filed against that order, which was dismissed vide order dated 22.05.2009 (R-2). Thereafter, petitioner No. 2 and 3 approached this Court and the case was dispose of with a direction to the trial court to dispose off the suit within 1 year under intimation to the Court vide order dated 05.10.2009 (R-3)

7. During the pendency of the suit, the above said F.I.R. No. 407 was registered by petitioner No. 2 against Baljeet Singh by moving a complaint under Section 156(3) Cr.P.C. in court of Illaqa Magistrate by concealing all the above facts (R-4). Baljeet Singh was granted anticipatory bail by Sessions Judge, Rohtak vide

order dated 10.09.2010 (R-5). In re-investigation by Economic Cell, S. P Office, Rohtak, the allegations were found to be false and a cancellation report was prepared (R-6). In regard to F.I.R. No. 407, an application was given to S.S.P. Rohtak by petitioner No. 2, which was inquired by D.S. P (HQ), it was found that petitioner No. 2 had concealed the material facts and found that the matter is of civil in nature (R-7).

8. In the meantime, the suit No. 259-1 of 2008-09 was decided vide judgments and order dated 30.09.2010 (R-8). An appeal was preferred against the order and petitioner No. 1 filed cross objection as Defendant No. 2 (C) and during the pendency of the appeal, the learned Additional District Judge passed an order to maintain status quo to all the respondents regarding the suit property vide order dated 10.11.2010 (R-11).

9. Thereafter, petitioner No. 1 moved an application to IG Police Rohtak and F.I.R. No. 475 dated 25.09.2011 u/ss. 420/448/188 IPC was registered. After investigation, it was found that the allegations are false and based on the concealment of facts. Baljeet Singh moved an application to S.S.P. Rohtak for cancellation of F.I.R. No. 475 vide peshi No. 3399 dated 28.12.2011 which was enquired by DSP (HQ) and on the basis of enquiry and investigation, F.I.R. was cancelled and cancellation report was prepared in the Court of Illaqa Magistrate. The applications and complaints given by the petitioners are mentioned in para (i) of the reply.

10. As per record, petitioner No. 1 and 2 in connivance with petitioner No. 3 had moved several false applications and complaint by concealing the true facts and documents with the intentions to harass Baljeet Singh.

11. Learned counsel for the respondents has argued that the judgments cited by learned counsel for the petitioners are not applicable to the facts of the present case as the investigation in the present case has been carried out after registration of the F.I.R. and thereafter, once the F.I.R. is registered under Section 154 and 156 Cr.P.C. it is neither the S.S.P. to whom the complaint was made nor the Illaqa Magistrate before whom the complaint under Section 156(3) was made, would be the competent authority to initiate proceedings under section 182 Cr.P.C.

12. The argument of learned counsel for the respondents is liable to be rejected in view of the judgment passed by this Court in CRM-M-60096 of 2014, decided on 06.02.2008 wherein relying upon the judgment of Daulat Ram's case (supra), it has been opined that if the prosecution is to be launched under Section 182 IPC, the complaint in writing should be made by the public servant concerned and not by any other person. Para 3 and 4 of the judgment reads as under:--

"3. The only question in this case is whether a complaint in writing as required by S. 195 had been presented by the public servant concerned. The public servant who was moved by the appellant was undoubtedly the Tehsildar. Whether the appellant wanted the Tehsildar to take action or not, the fact remains that he

moved the Tehsildar on what is stated to be a false averment of facts. He had charged Hans Raj and Kans Raj with offences under the Penal Code and he had moved his superior officer for action even though he might have stated in the letter that it was only for his information. We are prepared to assume that he expected that some action would be taken. In fact his second letter that he had compromised the matter and the proceeding might be dropped clearly shows that it anticipated some action on the part of his superior officer. The question is therefore whether under the provisions of S. 195, it was not incumbent on the Tehsildar to present a complaint in writing against the appellant and not leave the court to be moved by the police by putting in a charge-sheet. The words of S. 195 of the Criminal Procedure Code are explicit. The section read as follows:--

"(1) No Court shall take cognizance-(a) of any offence punishable under Ss. 172 to 188 of the Indian Penal Code. except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;...."

The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of S. 195. The words "no court shall take cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the manner provided by the section.

4. Now the offence under S. 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows of or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that S. 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar. This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of S. 195. 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 the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained."

13. In the present case, initially the complaint was made to the S.S.P. and thereafter, F.I.R. was registered. Thereafter, the complaint was made to the I.G.P and to the Judicial Magistrate under Section 156(3) Cr.P.C. After the cancellation report, representations were filed and thus, SHO cannot file calendar under Section 182 IPC against the present petitioners.

14. In *State of U.P. Vs. Mata Bhikh and Others*, (1994) 1 Crimes 945 : (1994) 2 JT 565 : (1994) 2 SCALE 235 : (1994) 4 SCC 95 : (1994) 2 SCR 368 : (1994) 1 UJ 697 following the judgment of *Daulat Ram's case* (supra), Hon'ble the Supreme Court opined as under:--

"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."

15. Similar view has been expressed by Hon'ble the Supreme Court in a recent judgment in *P.D. Lakhani and Another Vs. State of Punjab and Another*, (2008) CLT 785 : (2008) 6 JT 157 : (2008) 6 SCALE 236 : (2008) 5 SCC 150 : (2008) AIRSCW 3357 relying upon its earlier judgment in *Daulat Ram's case* (supra) and *Mata Bhikh's case* (supra). Relevant para thereof is extracted below:--

"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, 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 therefore. 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."

16. Recently, a co-ordinate Bench of this Court in a case Babita Vs. State of Punjab and another, (2008) 4 RCR(Criminal) 516 had quashed a calendar by relying upon the discussed judgment and held that a complaint in writing should have been made by SSP and not by SHO.

17. Applying the ratio of the above said judgments, calendar dated 04.05.2012 (P-1) and all proceedings subsequent thereto are quashed.

18. The petition stands allowed.