

“3. the Only Question in This Case Is Whether a Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Jan-10-2013

Appellant : “3. the Only Question in This Case Is Whether a

Respondent : State of Punjab

Judgement :

CRM M-31117 o

1. IN THE HIGH COURT OF PUNJAB AND HARYANAAT CHANDIGARH CRM M-31117 of 2012 (O&M) Date of Decision: January 10, 2013 Surtaj Singh Sohi Petitioner Versus State of Punjab Respondent CORAM: HONBLE Mr.JUSTICE PARAMJEET SINGH Present: Mr.Arihant Jain, Advocate, for the petitioner.

Mr.Arshdeep Singh Kler, AAG, Punjab.

Paramjeet Singh, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing calendra dated 29.04.2010 filed by SHO, Police Station Dhuri (Annexure P/6) under Section 182 of the Indian Penal Code and order dated 01.09.2012 (Annexure P/11) passed by the learned Trial Court vide which application of the APP under Section 321 Cr.P.C.has been dismissed.

Brief facts as stated in the petition are that petitioner submitted an application dated 14.04.2007 (Annexure P/1) to the Senior Superintendent of Police, Sangrur for vacation of ancestral land and for protection of life and liberty from Surjeet Singh.

An inquiry was conducted on the aforesaid application by the Deputy Superintendent of Police, Sub CRM M-31117 o

2. Division Dhuri and it was found that Surjeet Singh had vacated the land and he had deposited both the weapons and that petitioner was satisfied, therefore, no further action was required (Annexure P/2 - Inquiry report dated 16.06.2007). Thereafter, the petitioner again submitted an application dated 07.01.2009 (Annexure P/3) to the Deputy Superintendent of Police, Dhuri for registration of case against Surjit Singh son of Duman Singh, Surjit Singh son of Sarwan Singh and Kewal Singh, Lamberdar.

Again, the petitioner submitted an application dated 02.02.2009 (Annexure P/4) to the Senior Superintendent of Police, Sangrur.

Inquiry was conducted on the aforesaid application by the Superintendent of Police (D). Sangrur and the complaint was found to be false (Annexure P/5 - Inquiry report dated 04.04.2009). Thereafter, Surjit Singh submitted an application dated 15.03.2010 to the Senior Superintendent of Police, Sangrur for taking action against the petitioner under Section 182 Cr.P.C. The SHO, Police Station Dhuri filed Calendra dated 29.04.2010 (Annexure P/6) under Section 182 IPC.

Thereafter, the petitioner filed an application dated 20.07.2010 to the Senior Superintendent of Police, Sangrur that the matter be enquired into in detail.

The matter was enquired by the Deputy Superintendent of Police, Sub Division, Dhuri and the application dated 14.4.2007 of the petitioner was found to be true (Annexure P/7 - Report dated 17.11.2010). Thereafter, on 13.12.2011, the APP filed an application under Section 321 Cr.P.C. for withdrawal of the case.

The learned Trial Court vide order dated 01.09.2012 (Annexure P/11) dismissed the application of the APP for withdrawal of the case.

Hence, this petition.

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3. Notice of motion was issued.

In response to this, State has filed reply and denied the averments made in the petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner contends that the calendra presented by the SHO in the Court is totally incompetent for the reasons that in terms of the provisions of Section 195(1)(iii) of the Code of Criminal Procedure, the same could be presented only by the public servant to whom the complaint was made or any other public servant to whom he is administratively subordinate.

Therefore, Calendra could have been filed by S.S.P.or official senior to him and S.H.O.is not competent to file the calendra.

Learned State counsel contends that the calendar though was presented by SHO, but as it is evident thereon, it was on the direction by the Senior Superintendent of Police whereby he ordered for taking action against the petitioner under Section 182 IPC on the application of Surjeet Singh.

Honble Supreme Court in the case of Daulat Ram versus State of Punjab, AIR 196.S.C.1206 has held 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 CRM M-31117 o

4. 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.

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5. 4.

not 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 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.

(Sic 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 CRM M-31117 o

6. without jurisdiction ab initio and the conviction cannot be maintained.

Once the position of law on the issue whether calendar under Section 182 IPC can be presented under the signatures of any authority who though subordinate to the person to whom the complaint was made but on the direction of the authority concerned, is already settled and it has been opined that in case the prosecution is to be launched under Section 182 IPC, the complaint in writing should be made by the public servant concerned and not his subordinate and mere direction by the competent authority to present calendar cannot be considered as compliance of the provisions of law.

In the present case, the complaint was filed by the petitioner to the Senior Superintendent of Police but calendar has been presented by the SHO, which cannot be held to be valid in terms of provisions of Section 195(1)(iii) of the Code of Criminal Procedure.

In view of this, present petition is allowed.

Calendar (Annexure P/6) presented to the Magistrate and all subsequent proceedings thereto are quashed.

The impugned order dated 01.09.2012 (Annexure P/11) passed by the learned Trial Court is set aside.

January 10, 2013 [Paramjeet Singh].vkd Judge

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