(2007) 04 P&H CK 0126

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 48070-M of 2006

Tarlochan Singh		APPELLANT
	Vs	
State of Punjab		RESPONDENT

Date of Decision: April 17, 2007

Acts Referred:

- Copyright Act, 1957 - Section 63
- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 182, 195(1)(a), 195(1)(b)
- Penal Code, 1860 (IPC) - Section 182, 193, 211, 420
- Trade and Merchandise Marks Act, 1958 - Section 78, 79, 81

Citation: (2007) 3 RCR(Criminal) 791

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: Sunil Chadha, for the Appellant; Ravinder Kaur Nihalsinghwala, D.A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

T.P.S. Mann, J.

The Petitioner is seeking quashing of the Calendra dated 8.5.2005 u/s 182 IPC initiated against him by Station House Officer, Police Station Division No 3, Ludhiana and all the subsequent proceedings taken in pursuance thereof and pending in the Court of Judicial Magistrate Ist Class, Ludhiana.

2. It is stated in the petition that on a written complaint submitted by the Petitioner in the Court of Judicial Magistrate, Ludhiana against Ravel Singh and Tejinder Pal Singh, an order was passed by the said Court on 7.4.1999 u/s 156(3) Code of Criminal Procedure directing the SHO Police Station Division No. 3, Ludhiana to register a case by treating the complaint as an FIR and to investigate the matter. In pursuance thereof, FIR No. 24 dated 8.4.1999 was registered at Police Station Division No. 3, Ludhiana u/s 420 IPC, Sections 78, 79 and 81 of the Trade and Merchandise Marks Act, 1958 and Section 63 of

the Copyright Act, 1957. However, on the basis of an absolutely baised and defective investigation, the police prepared a cancellation report dated 23.5.1999 and after obtaining final approval from the Senior Superintendent of Police, Ludhiana, it was submitted before learned Judicial Magistrate Ist Class, Ludhiana. Vide order dated 20.1.2005, though the learned Judicial Magistrate accepted the cancellation report but gave liberty to the Petitioner to file a fresh complaint on the same facts. Consequently, the Petitioner filed a complaint (Annexure P-3) in the Court of Judicial Magistrate Ist Class Ludhiana. In the meantime, Ravel Singh, who was named as an accused in the FIR as well as in complaint (Annexure P-3), moved this Court for issuance of directions to the official Respondents to take appropriate action u/s 182 Code of Criminal Procedure against the Petitioner, which petition was disposed of on 21.7.2003 by directing Senior Superintendent of Police, Ludhiana to take appropriate legal action. On 8.5.2005, SHO Police Station Division No. 3, Ludhiana filed the impugned calendra u/s 182 IPC against the Petitioner, wherein he has now been summoned.

3. It was been submitted by learned Counsel for the Petitioner that the Petitioner has filed a complaint in the Court of Judicial Magistrate Ist Class on the same facts and allegations on which the FIR was registered and the said complaint is now pending for recording of preliminary evidence. Therefore, the complaint u/s 182 IPC against the Petitioner cannot proceed.

4. Learned Counsel for the Respondent submitted that the Petitioner knowingly gave false information to a public servant and therefore, he was required to be proceeded against u/s 182 IPC. However, it was not denied that a criminal complaint (Annexure P-3) has already been filed by the Petitioner on the same and similar allegations as were there in the earlier FIR registered at his instance.

5. There appears to be force and substance in the contention raised on behalf of the Petitioner. Though, the police had investigated the FIR registered on the basis of a complaint submitted by the Petitioner and found those allegations to be false, yet the Petitioner has thereafter filed a fresh complaint Annexure P-3 and the said complaint is still pending and fixed for recording of preliminary evidence.

6. In Banta Singh v. State of Haryana, 1995 (3) RCR (Cri) 133, the first information report lodged by the Petitioner was found to be false during investigation and he was prosecuted for an offence u/s 182 IPC. The Petitioner filed a complaint on the same facts and allegations on which he had made a statement before the police. The learned Magistrate had summoned the accused for various offences. It was held that the prosecution of the Petitioner u/s 182 IPC during the pendency of the complaint was evidently an abuse of the process of the Court and the proceedings were quashed.

7. In State of Punjab Vs. Brij Lal Palta, it was held that once a complaint filed by the informant, which is based on the same facts and allegations on which the first information report was registered, is being proceeded with, it was not open to a Magistrate to take

cognizance of any offence alleged to have been committed u/s 211 IPC unless there hs been proper compliance with the provisions of Section 195(1)(b) Code of Criminal Procedure It was further held that though the offence u/s 182 IPC was distinct from the one u/s 211 IPC, the latter was more serious and may include the offence under the former Section. The Magistrate could take cognizance of an offence u/s 195(1)(a) Cr.P.C., but it would virtually lead to the circumvention of the provisions of Section 195(1)(b) Code of Criminal Procedure if proceedings u/s 182 IPC could continue, where the offence disclosed was covered by Section 211 IPC and a complaint was pending which had been filed by the informant on the same facts and allegations as were contained in his First Information Report. Similarly, on a parity of reasoning with regard to the offence u/s 211 IPC, no cognizance could be taken by the Magistrate for the alleged offence u/s 193 IPC, which was one of the Sections mentioned in Section 195(1)(b) Code of Criminal Procedure

8. It is, thus, clear that if the case u/s 182 IPC is allowed to proceed, a decision in the said case would tantamount to pre-judging the complaint filed by the Petitioner. The prosecution of the Petitioner u/s 182 IPC during the pendency of his complaint on the same facts and allegations as mentioned in the FIR, would be an abuse of the process of the Court.

9. Resultantly, this petition succeeds. Calendra dated 8.5.2005 (Annexure P-1) and all the subsequent proceedings taken in pursuance thereof and pending in the Court of Judicial Magistrate 1st Class, Ludhiana are hereby quashed.