



CRM-M-24080-2022

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRM-M-24080-2022 (O & M)
Date of decision: 27.08.2025

Rupinder Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ajay Pal Singh Rehan, Advocate,
for the petitioner.

Mr. Iqbal Singh, AAG, Punjab.

Mr. Dheeraj Mahajan, Advocate,
for respondent No.2.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition filed under Section 482 Cr.P.C., is for quashing the Kalendra under Section 182 IPC, Annexure P-2, pending in the Court of learned Addl. Chief Judicial Magistrate, Gurdaspur and all consequential proceedings arising therefrom.

2. The petitioner had filed complaints against her brother i.e. respondent No.2 regarding the murder of their father, to the following authorities:

- i. Complaint dated 01.06.207 to the NRI Cell, Gurdaspur (Numbered as Complaint No. 966-NRI, dated 20.09.2017). The true copy of the same is annexed as Annexure P-3.

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- ii. Complaint dated 18.05.2017 to the I.G. Amritsar (Numbered as Complaint No.6945, dated 26.04.2018). The true copy of the same is annexed as Annexure P-4.
- iii. Complaint dated 23.05.2017 to the District and Sessions Judge, Gurdaspur (Numbered as Complaint No. 1119-Misc. dated 29.05.2017). The true copy of the same is annexed as Annexure P-5.
- iv. Complaint dated 23.05.2017 to the Deputy Commissioner, Gurdaspur (Numbered as Complaint No. 187-DC, dated 29.05.2017). The true copy of the same is annexed as Annexure P-6.
- v. Complaint dated 23.05.2017 to the S.S.P., Gurdaspur (Numbered as Complaint No. 1148-Misc. dated 31.05.2017). The true copy of the same is annexed as Annexure P-7.
- vi. Complaint dated 23.05.2017 to the Punjab State Human Rights Commission (Numbered as Complaint No. 295-HR, dated 20.06.2017). The true copy of the same is annexed as Annexure P-8.

3. These having been inquired into, were consigned to record but the inquiry officer did not take any action under Section 182 IPC. Be that as it may, on a representation submitted by respondent No.2 to the SSP to register a criminal case against the petitioner, the SHO, Police Station Tibber, Gurdaspur, filed Kalendra under Section 182 IPC.

4. The State in para 4 of the short reply by way of affidavit of the Deputy Superintendent of Police, City, District Gurdaspur, dated 02.03.2023 stated that DSP/City, Gurdaspur has also, vide his comments, given approval with the enquiry report, Deputy DA (Legal) also opined for presentation of a Kalendra under Section 182 IPC against the petitioner and then, SSP, Gurdaspur had directed to SHO, Police Station Tibber for necessary action on 14.10.2019, while it was the said authority, which was competent to file the

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Kalendra. It was not the own volition of the State authorities that the Kalendra was registered, but the complaint/representations of respondent No.2.

5. As per Section 195(1)(b)(i) Cr.P.C., with regard to the aforesaid offence, it could have been initiated only by the officer concerned or senior to the one before whom the false complaint had been made else the proceedings would be rendered *void ab initio*, as held by Hon'ble the Supreme Court in the case of **P.D. Lakhani vs. State of Punjab**, 2008(2) RCR (Criminal) 838, wherein the maintainability of the Kalendra filed by the SHO under Section 182 IPC, who had investigated the complaint that had been addressed to the SSP, was considered. It was observed that under Section 195 Cr.P.C., a complaint could be filed by the SSP or a superior officer and not by the inferior officer. Whatever action was taken in the matter was pursuant to the orders of the Senior Superintendent of Police, Jalandhar, upon which, the search was made, is not in dispute. Section 195 contains a bar on the Magistrate to take cognizance of any offence, when a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction. In a case of this nature, representation, if any, for all intent and purport was made before the Senior Superintendent of Police and not before the Station House Officer. The relevant paras read thus:

“13. 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, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or

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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 therefor. 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.

14. In *Daulat Ram v. State of Punjab* [(1962) 2 SCR 812], Hidayatullah, J. (as the learned Judge then was), held as under: "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 this case."

6. In **Randhir vs. State of Haryana and others**, 2003(4) RCR (Criminal) 651, this Court while dismissing petition has held that the complaint is required to be filed by the public servant concerned i.e. by the Superintendent of Police to whom false grievance is alleged to have been made by the accused. It was held that:

5. The question whether the Superintendent of Police is competent to file complaint or it could be filed even by a person subordinate to him has been subject matter of consideration in the cases of *Harbans Singh* (supra); *Davinder Singh v. State of Punjab and another*, 1991 (2) C.L.R 194 : 1991 (1) RCR (Cr.) 149 (P&H) and *Malkiat Singh* (supra). It has been held in all the aforementioned judgments that the complaint is required to be filed by the public servant concerned i.e by the Superintendent of Police to whom false grievance is alleged to have been made by the accused. In those cases also, it was the Station House Officer who had filed the complaint whereas the false grievance is alleged to have been made to the Superintendent of Police.

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Therefore, there is no room to accept the prayer made by the petitioner. Even otherwise, the public officer is an aggrieved party who should have filed an appeal or revision. Therefore, there is no merit in the instant petition and the same is liable to be dismissed.”

7. This Court in the case of **Kulwinder Singh vs. State of Punjab and another** 2008(4) RCR (CrI.) 418, quashed the Kalendra finding the SHO incompetent as the complaint had been made to the SSP and Deputy Inspector General of Police and held that in case the prosecution has to be launched under Section 182 IPC, the complaint in writing should be made by the public servant concern and not his subordinate and even a direction by competent authority to present Kalendra will not comply with the provision of law.

8. The Kalendra in **Malkiat Singh vs. State of Haryana**, 1998 SCC OnLine P&H 1443, was quashed by this Court while following the decision in **Krishna Tukaram Jadhav and another vs. The Secretary to the Chief Minister, Bombay State**, AIR 1955 Bombay 315, on the ground that the complaint disclosing cognizable offence under Section 302, 148, 149, 120B and 201 IPC was submitted to the Superintendent of Police, Kurukshetra, wherein the SHO carried out the investigation and held that no complaint under Section 182 IPC could be filed by the SHO, if the same was found to be false without registration of FIR. Similar view has been taken by this Court in the case of **Surjit Singh vs. State of Punjab**, CRM-60096-M-2004, decided on 06.02.2008, quashing the Kalendra presented by Assistant Sub Inspector, while the complaint by the petitioner had been filed to the SSP, holding it to be not valid in terms of provisions of Section 195(1)(iii) of Cr.P.C.

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9. The enunciation of law elucidating the above provision makes it crystal clear that in the present case, since, the complaint was submitted to the authorities as stated above, which though got it enquired into by a subordinate officer(s), however, would not imply that the SHO, who was asked to present the Kalendra, had the capacity to present the complaint under Section 182 IPC against the petitioner, in view of which the submission of learned counsel for the respondents contrary to the above cannot be countenanced.

10. Ex-consequenti, the petition is allowed and the Kalendra dated 31.01.2022, Annexure P-2, is hereby quashed.

27.08.2025
parveen kumar

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No