



2026:PHHC:033042



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

CRM-M-48441-2018

Vinod Kumar @ Akhtar

...Petitioner

V/s

State of Punjab and another

...Respondents

Date of Reserve: 11.02.2026

Date of Pronouncement: 05.03.2026

Date of Uploading : 05.03.2026

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Anil Kumar Garg, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG Punjab.

SUMEET GOEL, J.

1. The petitioner has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure seeking quashing of the *Qalandra* presented against him under Section 66 of the Punjab Police Act, 2007 titled as *State through S.H.O. P.S. Haibowal, Ludhiana versus Vinod Kumar @ Akhtar* pending before the learned Court of Judicial Magistrate Ist Class, Ludhiana, (hereinafter referred to as '*Impugned Qalandra*') along with all the consequential proceedings arising therefrom including the order dated 11.06.2018 whereby notice was issued to the petitioner.

2. Shorn of non-essential details, the relevant factual matrix of the *lis* in hand is adumbrated thus:



(i) The petitioner claims to be a social worker who had submitted representations to the authorities alleging misuse of reservation benefits by a certain individual who was stated to have secured public employment on the basis of an OBC certificate. The petitioner placed certain documents before the competent authorities and sought an enquiry. The matter was examined by the concerned welfare authorities, who opined that no action for cancellation of the certificate was required. The petitioner thereafter submitted further representations to higher police authorities.

(ii) Pursuant to the said representations, an enquiry was conducted at the level of the office of the Commissioner of Police, Ludhiana through a senior police officer. The enquiry report concluded that the allegations levelled by the petitioner were not substantiated and further opined that the complaint had the effect of casting aspersions upon a Judicial Officer. On the basis of the said report, directions were issued to the Station House Officer for initiating proceedings under Section 66 of the Punjab Police Act, 2007, whereupon the impugned *Impugned Qalandra* was filed before the learned Magistrate. The learned Magistrate, on presentation of the *Impugned Qalandra*, passed a brief order registering the same and issued notice to the petitioner.

It is in the aforesaid factual *milieu* of the case in hand, the petitioner has approached this Court by way of the petition in hand.

3. Learned counsel for the petitioner has iterated that the impugned proceedings are without jurisdiction inasmuch as the original complaint has been made to a superior police authority and was enquired into at that level. Learned counsel has further iterated that if at all the complaint was found to be false, any action could only have been initiated

by the authority before whom the complaint was made or by an officer administratively superior thereto and not by an officer of an inferior rank. Learned counsel has emphasized that the learned Magistrate has mechanically issued notice without examining the legal bar contained in Section 195 Cr.P.C. and without considering the law laid down by the Hon'ble Supreme Court of India in *P.D. Lakhani and another versus State of Punjab and another, 2008 (2) RCR (Criminal) 838*. Furthermore, the impugned proceedings are the result of bias and have been initiated only to pressurize the petitioner, who had acted as a whistle-blower. It has been further submitted that the enquiry report was prepared behind the back of the petitioner without affording him any opportunity of hearing. Even service of notice was not effected in accordance with law and the petitioner was compelled to appear before the Court through a police official. On these premises, learned counsel has prayed that the *Impugned Qalandra* and all consequential proceedings arising therefrom be quashed to prevent abuse of the process of law.

4. *Per contra*, learned State counsel has opposed the petition in hand and has submitted that the *Impugned Qalandra* has been filed strictly in accordance with law and the same does not suffer from any illegality or jurisdictional error. Learned State counsel has iterated that the enquiry conducted by the police authorities revealed that the allegations levelled by the petitioner against a serving Judicial Officer were found to be false and motivated & the same has the effect of lowering the dignity of a public servant holding a high office. In such circumstances, the competent authority directed initiation of proceedings under Section 66 of the Punjab Police Act, 2007 and the Station House Officer merely acted upon the said

directions. It has been further argued that the SHO, being an authorized officer of the police station concerned, was competent to present the *Impugned Qalandra* before the learned Magistrate and the same cannot be said to be without jurisdiction. Furthermore, the petitioner has an efficacious alternative remedy before the trial Court to raise all legal and factual pleas, including the question of maintainability. Learned State counsel has further submitted that the power under Section 482 Cr.P.C. is to be exercised sparingly and only in cases where there is a patent abuse of process or where the allegations do not disclose any offence. Since the enquiry report clearly records that the petitioner made false and unsubstantiated allegations against a public servant, the *Impugned Qalandra* discloses a *prima facie* case, the dismissal of the instant petition is canvassed for.

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

6. The issue that arises for cogitation before this Court is whether the *Impugned Qalandra* presented by the Station House Officer pursuant to an enquiry conducted by superior police authorities is maintainable in law. The scheme of Section 195 Cr.P.C. clearly mandates that in respect of certain offences relating to public justice, cognizance can be taken only upon a complaint in writing of the public servant concerned or of a public servant to whom he is administratively subordinate. The legislative intent is to ensure that prosecutions for alleged false complaints or offences affecting administration of justice are not initiated at the instance of officers lower in hierarchy than the authority before whom the alleged false complaint was made. In the present case, it is not in dispute that the representations of the

petitioner were addressed to the Commissioner of Police and the enquiry was conducted by a senior officer at that level. If the complaint was found to be false, the law required that any consequential proceeding(s) ought to have been initiated by the authority concerned or by an officer administratively superior thereto. The initiation of proceedings by the Station House Officer, who is admittedly subordinate in the hierarchy, is contrary to the mandate of Section 195 Cr.P.C. A profitable reference in this regard is made to the judgment of the Hon'ble Supreme Court in ***P.D. Lakhani and another versus State of Punjab and another, 2008 (2) RCR (Criminal) 838***, relevant whereof reads as under:

“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 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.”

The said decision was followed by a Division Bench of this Court in State of U.P. v. Mata Bhikh & Ors. [(1994) 4 SCC 95], stating: "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."

7. The above *ratio decidendi* clearly reflects that where a complaint is made to a superior officer and subsequently upon investigation is found to be false, any complaint for prosecution must emanate from that very authority or a superior authority and not from an officer of a lower rank. The ratio of *P.D. Lakhani* (supra) squarely applies to the facts of the present case. Furthermore, the order dated 11.06.2018 passed by the learned Magistrate reflects that the *Impugned Qalandra* was registered and notice was issued in a routine manner without examining the statutory bar and without application of judicial mind to the question of maintainability. In the considered opinion of this Court, the requirement of due consideration at the stage of taking cognizance cannot be treated as a routine formality. It is borne out from the record that the petitioner had approached the authorities by way of representation(s) on a matter which, according to him, involved public interest. Whether the allegations were ultimately found to be correct or not is a different matter, but the recourse to criminal process in the manner adopted in the present case appears to be a misuse of the statutory provisions. Accordingly, this Court is of the considered opinion that the *Impugned Qalandra* presented by the Station House Officer is not

maintainable in law and the continuation of the proceedings would amount to abuse of the process of the Court.

8. At this stage, this Court deems it appropriate to clarify that the quashing of the *Impugned Qalandra* and subsequent proceedings arising therefrom, by way of this Order does not, by any stretch of legal imagination, operate as a perpetual injunction against the state to move a fresh complaint or a grant of absolute immunity to the petitioner. The instant adjudication is predicated solely upon the statutory bar contained in Section 195 Cr.P.C., which necessitates that a complaint be initiated only by the public servant specified therein.

This Court has not delved into the factual culpability or innocence of the Petitioner, and thus the instant Order does not clothe the petitioner with the mantle of a '*meritorious acquittal*'. The interference by this Court acts to vindicate the due process of law rather than to provide a final absolution of the alleged acts. To allow a prosecution to continue despite a clear violation of mandatory provisions of Section 195 Cr.P.C., would be to ignore jurisdictional defect, yet to bar a further lawful prosecution (if any) would be to defeat the ends of justice on a mere technical windfall. By way of instant order, the prosecution is merely relegated to return to the *status quo ante* (i.e. to the stage before filing of the *Impugned Qalandra* and it is open for the concerned authority(s) to proceed again in accordance with law. *Ergo*, the quashing of the *Impugned Qalandra* on the grounds of a jurisdictional defect under Section 195 Cr.P.C. does not operate as a bar to subsequent legal action. As this Court has not adjudicated upon the factual merits or the innocence of the Petitioner, the State remains

at liberty to initiate a fresh complaint or *Qalandra* in strict accordance with the prescribed statutory procedure.

9. This Court is cognizant of alarming proliferation of frivolous and vexatious complaint where baseless allegations are routinely weaponized to unsettle the administration of justice. To prevent the machinery of law from being transmuted into an instrument of harassment, the legislature, in its thoughtfulness, has enacted specific safeguards in the form of Section 66 Punjab Police Act, 2007; Section 182 IPC, 1860; Section 217 BNS, 2023. Pertinently, the legislature has also provided for special procedure to be followed in prosecution of these offences in Section 195 Cr.P.C./215 BNSS. The requirements contained in Section 195 Cr.P.C./Section 215 BNSS are not mere directory but are mandatory jurisdictional pre-requisite.

Regrettably, it has been observed that these procedural mandates are frequently bypassed or treated with a sense of casual indifference. In the instant case, the filing of the *Impugned Qalandra* without adherence to the strictures of Section 195 Cr.P.C. represents a textbook example of procedural dereliction, rendering the entire prosecutorial exercise a *brutum fulmen* that unnecessarily squanders judicial time and state resources.

9.1. It is pertinent to note herein that filing of *Qalandra* by the police under Section 195 of the Cr.P.C. is not a perfunctory procedural ritual, but a substantive exercise of sovereign power aimed at vindicating the majesty of the law. While the provision is couched in restrictive terms, stipulating that "*No court shall take cognizance....*", this statutory bar is not intended to stifle the ends of justice. Rather, it acts as a *sentinel on the qui*

vive, ensuring that the machinery of law is triggered exclusively by the concerned public authority to prevent private vendettas from clogging the wheels of justice in matters where the State is the primary aggrieved party. In this light, Section 195 of the Cr.P.C., transcends its role as a restrictive shield and emerges as an enabling mandate, empowering the State to act as the custodian of public order and the *parens patriae* of the administration of justice. In cases involving personal or proprietary harm, the individual grievance typically drives the litigation; however, where the offence is directed against the lawful authority of a public servant or the sanctity of judicial proceedings, there is often no '*individual victim*' to pursue the cause. In such instances, the State must not remain a *mute spectator* or act with a sense of lethargy that reduces a solemn statutory obligation to a mere formality. The filing of a *Qalandra* represents the discharge of a statutorily imposed duty that must be permeated with due diligence and a high degree of professional responsibility. To treat this process as a secondary task is to invite a *State of Anomie* and to erode the *imperium* of the State. *Ergo*, the public servant, acting on behalf of the State, must realize that they are the sole guardians of the legal threshold in these matters. Any delay or lackadaisical approach in filing the *Qalandra* not only undermines the efficiency of the administration but also grants a *de facto* immunity to offenders, thereby compromising the *Rule of law*. Consequently, the initiation of these proceedings must be characterized by due diligence and an unwavering commitment to bringing offences against the public authority to justice.

9.2. Consequently, this Court finds it imperative to issue remedial directions to arrest this procedural laxity. The Director General of Police,

Punjab is hereby directed to institutionalise a comprehensive sensitisation programme for all police officials within the State of Punjab to ensure strict adherence with mandatory provisions of Section 195 Cr.P.C./Section 215 BNSS. Furthermore, the Director General of Police, Punjab shall conduct a formal inquiry to ascertain whether the filing of the *Impugned Qalandra* by the concerned SHO was a result of bona-fide professional error or was motivated by malafide intentions or ulterior consideration.

10. In view of the prevenient ratiocination, it is ordained thus:

(i) The petition in hand is allowed and the Kalandra under Section 66 of the Punjab Police Act, 2007 titled *State through S.H.O. P.S. Haibowal, Ludhiana versus Vinod Kumar @ Akhtar* pending before the learned Court of Judicial Magistrate Ist Class, Ludhiana and all consequential proceedings arising therefrom, including the order dated 11.06.2018 issuing notice to the petitioner, are hereby quashed.

(ii) A detailed compliance report *re* directions issued (*ibid*); including but not limited to the systematic measures adopted by the Director General of Police, Punjab for sensitization; shall be filed before Registrar General of this Court within 06 weeks from today.

(iii) Nothing observed herein shall be construed as an expression of opinion on the merits of the allegations made by the petitioner in his original representations and/or the merits of the *Qalandra* filed by State.

(SUMEET GOEL)
JUDGE

March 05, 2026

Ajay/mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No