

Serial No. 16
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 61 of 2023

Date of Decision: 25.08.2023

Shri. Moina Singh Phyllut Vs. State of Meghalaya & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Thapa, Adv.
Mr. B. Snaitang, Adv.
Mr. S. Khyriem, Adv.
For the Respondent(s) : Mr. S.A. Sheikh, GA.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT (ORAL)

1. This is an application under Section 482 Cr.P.C with a prayer for quashing of the FIR dated 19.11.2018 and the corresponding proceedings in G.R. Case No. 297 of 2018 under Sections 109 and 188 IPC pending before the Court of the learned Judicial Magistrate First Class, West Jaintia Hills District, Jowai.

2. Heard Mr. S. Thapa, learned counsel for the petitioner who has submitted that the background facts leading to the filing of this instant

petition is that sometime in the year 2018, a dispute arose between certain groups as to who should be the priest to perform pujas at Nartiang Durga Temple, Nartiang. Following such dispute, a writ petition was filed before this Court by interested parties being WP(C) No. 335 of 2018. This Court, on hearing the parties, has, vide order dated 18.10.2019 (Annexure-1 of this petition) disposed of the said writ petition with the observation as under:

“3. Learned counsel for the parties agreed that during the pendency of the writ petition, the dispute has been amicably settled between the parties and Shri. Oni Maskut Deshmukh whose family has been performing the ritual as Priest for 26 generations has been allowed to continue as the Priest of Nartiang Durga Temple. It was thus prayed that in view of the above, the writ petition has been rendered infructuous and may be disposed of as such.

4. Ordered accordingly.”

3. The learned counsel has further submitted that in course of a puja being performed in the temple, there was an altercation between the two rival groups, for which police force was deployed in and around the said temple in compliance with the relevant orders passed by this Court.

4. After a month of the said incident, an FIR was lodged on 19.11.2018 by Inspector A.D. Sangma as Officer-in-Charge, Nartiang Police Station, the same being registered as Nartiang P.S. Case No. 50 (11) 2018 under Sections 109 and 188 IPC, the petitioner herein being named as one of the accused person therein. The said case was charge sheeted and a

regular case was registered as G.R. Case No. 297 of 2018 under Sections 109 and 188 IPC, now pending before the Court of the learned Judicial Magistrate First Class, West Jaintia Hills District, Jowai.

5. It is the contention of the learned counsel for the petitioner that the said FIR could not have been filed and that too under the provisions of Sections 188 and 109 IPC, which in the context of the case of the petitioner speaks of abetment of the commitment of offence under Section 188 IPC and consequently, the impugned order dated 05.01.2023 was passed by the learned JMFC in the said G.R. Case No. 297 of 2018 holding that a prima facie case under Sections 109 and 188 IPC is made out against the petitioner herein. The same could not have been passed in view of the bar under Section 195 IPC, submits the learned counsel.

6. On the provision of the application of Section 195, the learned counsel has cited the case of *Daulat Ram v. State of Punjab reported in 1962 Supp (2) SCR 812*, para 3 & 4 and also the case of *C. Muniappan & Ors v. State of Tamil Nadu: (2010) 9 SCC 567* at para 32 & 33.

7. In conclusion, the learned counsel has submitted that proceeding with the said G.R. Case No. 297 of 2018 would be a futile exercise and as such, the said proceedings may be set aside and quashed by this Court.

8. Mr. S.A. Sheikh, learned GA appearing on behalf of the State

respondents has defended the impugned proceedings and the steps taken by the police when the said FIR was filed, inasmuch as, the factual situation at the relevant point of time is that the order of this Court was to be upheld and the police personnel who were present when the alleged violation of this Court's order took place, had to resort to due procedure and accordingly, the FIR was filed.

9. The submission of the learned counsel for the petitioner that the matter has been settled between the parties is correct to a certain extent, however, the police force which is required to look into the law and order situation has to deal with the situation at the relevant point of time and the petitioner herein being identified as one of the instigator of a conflict between the two rival groups when the said puja was performed at Nartiang Durga Temple, therefore, the proceedings which followed the filing of such FIR is justified. It is further submitted that the petitioner may be allowed to assert his innocence before the Trial Court.

10. The learned GA has also submitted that the police officer being a public servant and on noticing that this Court's order was violated, therefore, he is competent to file the said FIR.

11. In reply, the learned counsel for the petitioner has submitted that, if it relates to an alleged violation of the High Court's order, then the

provision of Section 340 Cr.P.C would be applicable as the said section stipulates that a complaint filed in compliance to the proceedings of Section 195 where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint, whereas, in this case, firstly, there was no complaint filed by the Court and no officer of the Court was ever authorized to file any such complaint.

12. This Court has considered the submission made and would not reiterate the facts as has been indicated above. What is understood is that the petitioner, while assailing the impugned order and proceedings, has maintained that for an offence to fall under Section 188 IPC, which speaks of disobedience to order duly promulgated by a public servant, firstly, the said order has to be clearly specified and the public servant said to have issued the said order has to be made known.

13. Again, Section 195 Cr.P.C provides for prosecution for contempt of lawful authority of public servants and under the said section, Clause (a) (i) & ii of sub-Section 1 provides that no Court shall take cognizance of any offence punishable under sections 172 to 188 IPC or of any abetment of, or attempt to commit, such offence, except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf or of some other Court to which that Court is subordinate.

14. An interpretation of the above according to the petitioner would be that, firstly, for an offence under Section 188 IPC, the proper procedure would be for a complaint to be filed by the concerned public servant or by an officer duly authorized by the Court, order(s) of which has been violated. Apparently, this is not the case here as the informant who has filed the FIR, though being a police officer, was not a public servant whose orders have been violated and was also not authorized by any Court to file the said FIR.

15. In the case of C. Muniappan (supra) at para 32 and 33, the Hon'ble Supreme Court has referred to the case of Daulat Ram (supra), also cited by the petitioner herein and has observed as follows:

"32. In Daulat Ram v. State of Punjab, AIR 1962 SC 1206, this Court considered the nature of the provisions of Section 195 Cr.PC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under: (AIR pp. 1207-08, paras 4-5)

"4. ...The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

5. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside."

(Emphasis added)

33. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The

complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.”

16. In view of the authority cited above, in the context of the issues raised before this Court as regard the proceedings in G.R. Case No. 297 of 2018, this Court is of the considered opinion that a wrong procedure was indeed followed and the proceedings has clearly hit by the provisions of Section 195 Cr.P.C.

17. Accordingly, the submission of the learned counsel for the petitioner has force and the same is agreed to by this Court.

18. Consequently, this petition is allowed and the proceedings in G.R. Case No. 297 of 2018 are hereby set aside and quashed.

19. The petitioner is discharged from any liability in the case.

20. In view of the above, this petition is accordingly disposed of. No costs.

21. Registry is directed to return the C.D.

Judge

Meghalaya
25.08.2023
“D. Nary, PS”