

GAHC040008772020

2024:GAU-AP:1005



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Petn./39/2020

Kali Lombi
S/O SHRI LOMKA LOMBI, RESIDENT OF VILLAGE CHEKOR LOMBI, PO/PS
TIRBIN, LEPA RADA DISTT, AP

VERSUS

The State of AP and Others
THROUGH THE PP

Advocate for the Petitioner : Rajesh Sonar, R Taku

Advocate for the Respondent : P P of AP,

BEFORE:
HON'BLE MR. JUSTICE BUDI HABUNG

For the Petitioner : Mr. R. Sonar

For the Respondents : Mr. T. Ete

Date of hearing : 08.11.2024.

Date of Judgment : 14.11.2024

:: JUDGMENT AND ORDER ::
[CAV]

Heard Mr. R. Sonar, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor of the State of AP.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR dated 07.04.2020, registered as Likabali Police Case no. 11/2020 under section 188/505(1)/186/500/34 IPC read with Section 54 of the Disaster Management Act, 2005 and the subsequent filing of the chargesheet No. 45/2021 dated 12/01/2022 corresponding to the GR case no. 331/2020 pending before the Court of Chief Judicial Magistrate, East Siang, Pasighat.

3. The brief fact of the case is that on 07.04.2020, an FIR was lodged before the Officer-in-Charge, Likabali Police Station by the opposite party No. 2, Shri. Tumke Angu, who himself was the Officer-in-Charge of the Likabali Police Station against some unknown persons, *interalia*, alleging that false news was being circulated in the social media like Facebook and Whatsapp stating that 'Likabali Police are illegally allowing Non-APST (Muslims) to enter into Arunachal Pradesh without ILP via Likabali police Check Gate, Lower Siang District,

Likabali, amid the lockdown period owing to the global pandemic Covid-19; and in that regard an old video footage being projected as the new video has been uploaded in the social media by one Y.M News Channel and also by some unknown miscreant in social media. It was further stated that "they are misleading the public of the area and thereby, creating panic amongst the public and it has demoralized the police force.

4. Basing on the above FIR dated 07.04.2020, the Likabali Police Case No. 11/2020, under section 188/505 (1)/186/500/34 IPC, R/w Section 54 of The Disaster Management Act, 2005, was registered by the Likabali Police Station, Lower Siang District, Arunachal Pradesh and investigated into. Subsequently, during the pendency of the present criminal petition, the IO of the case, after completion of the investigation has submitted the case into chargesheet No. 45/2021 on 12.01.2022 before the Chief Judicial Magistrate, East Siang, Pasighat against the accused persons under section 188/505 (1)/186/500/34 IPC, R/w Section 54 of The Disaster Management Act, 2005. It is submitted that the above FIR was lodged and investigated into and the accused was summoned to appear before the police when the entire State of Arunachal Pradesh was under complete lockdown due to the Covid-19 pandemic.

5. Apprehending his arrest the accused/petitioner moved Anticipatory Bail Application No. 87/2020 before this Hon'ble Court

seeking pre-arrest bail, which was allowed by an order dated 18.09.2020. It is submitted that the petitioner is innocent as he has not committed any of the alleged offences, and the police has wrongly and illegally registered the above false and frivolous police case against the petitioner without lawful authority and in contrary to the scheme of the Criminal Procedure Code, 1973. Therefore, the present criminal petition has been filed inter-alia on the following grounds:

- (i) That, even if the entire allegations made in the FIR are taken on its face value, no case of cognizable offence under Section 188 IPC and/ or even non-cognizable offences under Section 186/500/505(I)/34 IPC and Section 54 of the Disaster Management Act, 2005 are made out against the petitioner.
- (ii) That the offences, except the offence under section 188 IPC, registered in the present police case under section 186/500/505(I)/34 IPC read with Section 54 of the Disaster Management Act, 2005 are non-cognizable offence which is defined under Section 2 (1) of the Criminal Procedure Code. Moreover, in view of Section 155(2) of the Criminal Procedure Code, 1973, no police officer has the authority to register or investigate a non-cognizable case without the order of a magistrate having power to try such case or commit the case for trial. In the present case, admittedly, the police without obtaining the

prior necessary mandatory order from the competent jurisdictional magistrate, have most illegally, straightly and without any lawful authority registered the above mentioned non-cognizable offence against the petitioner in violation of the mandatory provision of the Criminal Code, which is per se illegal and not legally untenable.

(iii) That in view of the bar engrafted under section 195 of the Criminal Procedure Code, no FIR can be registered under section 188 IPC which is only the cognizable offence registered in the said police case. Section 195 of the Criminal Procedure Code mandates that only a Magistrate can take cognizance of an offence under Section 188 IPC, and that too on a complaint submitted by the public servant concerned whose duly promulgated order is allegedly violated or if some other public servant to whom he is administratively subordinate. As such, registration of the FIR under section 188 IPC in the present case is antithesis to Rule of Law and violates Article 14 and 21 of the Constitution.

(iv) That, in order to attract the provisions of Section 188 the written complaint of the public servant concerned should reflect the following ingredients namely:

i) there must be an order promulgated by the public servant;

ii) That such public servant is lawfully empowered to promulgate it;

iii) That the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and

iv) that such disobedience causes or tends to cause:

(a) obstruction, annoyance or risk of it to any person lawfully employed, or

(b) Danger to human life, health or safety, or

(c) a riot or affray.

v) The promulgation through which, the order is made must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation. In the present case the above ingredients are completely absent in the FIR under challenge.

(v) That in the FIR under challenge, it is completely silent as to which duly promulgated order of which public servant has been violated by the petitioner. The petitioner has no knowledge about any order promulgated by the Officer in

Charge, Likabali Police Station, which he has violated.

- (vi) That considering the fact that Hon'ble Supreme Court in ***C. Muniappan v. State of T.N.***, reported in **(2010) 9 SCC 5671** qua S. 188 IPC has said that "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 CrPC are mandatory. Non-compliance with 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 ab initio being without jurisdiction.
- (vii) That the term "complaint" defined under Section 2 (d) of the Cr.P.C. implies two things: 1) that the allegations regarding the commission of offence have to be made to a "magistrate"; and 2) that the "police report" does not fall within the meaning of "complaint". It is submitted that in the instant case the machinery of criminal justice for offence punishable under Section 188, IPC has been set in motion by filing FIR, instead of "complaint" before the magistrate, which is not permissible in view of the plain wordings of Section 195, Cr.P.C.
- (viii) that even assuming that some order has been

promulgated by the concerned public servant but mere disobedience of an order of a public servant will ipso facto not attract the provision of Section 188 IPC. The Hon'ble Supreme Court in ***Ramlila Maidan Incident, in re, (2012) 5 SCC 11*** has said, "*Disobedience of an order promulgated by a public servant lawfully empowered will not be an offence unless such disobedience leads to enumerated consequences stated under the provision of Section 188 IPC. More so, a violation of the prohibitory order cannot be taken cognizance of by the public servant who passed it. He has to prefer a complaint about it as provided under Section 195(I)(a) CrPC. A complaint is not maintainable in the absence of allegation of danger to life, health or safety or of riot or affray*".

- (ix) that the object of section 195 of the Criminal Procedure is to protect persons from being needlessly harassed by vexatious prosecutions in retaliation. It is a check to protect innocent persons from criminal prosecution which may be activated by malice or ill will.
- (x) that the provisions of Section 195 of the Code are mandatory and non-compliance with it will make the entire process void ab initio and without jurisdiction as well. As such, since cognizance of offence under Section 188 of the IPC can be taken on the basis of complaint in

writing filed by the public servant concerned within the meaning of Section 2(d) of the Code, offence under Section 188 of the IPC being cognizable offence is not also saved by Explanation appended to Section 2(d) of the Code, as by Explanation to Section 2(d) of the Code, report made by police officer after investigation of non-cognizable offence is only to be treated as complaint and person making the complaint is to be treated as complainant and police report or FIR is not a complaint and further, charge- sheet is a report of police officer. Therefore, the first information report also cannot be registered under Section 154 of the Code for offence under Section 188 of the IPC, as registration of FIR after investigation would culminate into police report under Section 173(8) of the Code which cannot be taken cognizance of by the Magistrate under Section 190 of the Code, as such registration of FIR for offence under Section 188 IPC is statutorily barred.

- (xi) that bare reading of the contents of the FIR would not disclose either any cognizable or non-cognizable offences even if the entire contents of the FIR are accepted on its face value. There is nothing in the FIR which would even remotely suggest the commission of the alleged offences under the above various sections of penal laws. However,

the police have most illegally and wrongly registered the present police case under the above various sections of the penal laws. Moreover, it is pertinent to state and submit that all the above registered sections of laws-section 186/188/500 IPC R/w Section 54 of the Disaster Management Act, 2005, except Section 505 (1) IPC, are bailable in nature and Section 505 (1) IPC, although a non-bailable offence, is a non-Cognizable offence, which the Police have no lawful authority to register the case without a prior permission of the concerned jurisdictional magistrate court. Therefore, the registration of the FIR dated 07.04.2020 under challenge in the present petition is manifestly malicious, arbitrary, illegal, abuse of process of law and without authority of law and deserves to be set quashed in the interest of justice and to prevent the abuse of process of law.

6. In support of his submission, the learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Bhajan Lal*** reported in ***1991 (1) supp. SCC 335***. The relevant paragraph 102 is reproduced herein below:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under

Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

7. The learned counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in the case of **Mamta Shailesh Chandra Vs. State of Uttarakhand and Ors reported in 2024**

SCC OnLine SC 136, the relevant paragraphs are reproduced herein below:

“3. We do not agree with the reasoning of the High Court for dismissing the writ petition of the appellant, having regard to the ratio of the judgment of this Court delivered on 04.07.2011 in the case of Joseph Salvaraj A. vs. State of Gujarat & Ors. reported in 2011 (7) SCC 59. That was a case arising from the quashing plea of an F.I.R., where chargesheet was submitted after institution of the petition under Section 482 of the Code of Criminal Procedure 1973. A Coordinate Bench of this Court opined that even if the charge sheet had been filed, the Court could still examine if offences alleged to have been committed were prima facie made out or not on the basis of the F.I.R., chargesheet and other documents.

4. We, accordingly, set aside the impugned order and remand the matter to the High Court. Let the High Court hear the criminal writ petition on merit. We also direct, on the basis of materials disclosed, that the appellant shall not be arrested for the offences alleged in the said F.I.R. until the High Court decides the criminal writ petition on merit, unless a case is made out before the High Court that the appellant's detention is necessary on account of any development subsequent to filing of the chargesheet. We issue this direction in exercise of our jurisdiction under Article 142 of the Constitution of India.”

8. The learned counsel for the petitioner further submits that that section 482 of the Cr.P.C is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under the CrPc; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. These principles have been consistently followed and re-iterated by the Apex court and this Hon'ble Court in **Inder Mohan Goswami Vs State of Uttaranchal** reported in **(2007)**

12 SCC 1, the Apex Court observed:

“**23.** This court in a number of cases has laid down the scope and ambit of courts' power Under Section 482 Code of Criminal Procedure Every High Court has inherent powers to act ex debito justiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power Under Section 482 Code of Criminal Procedure can be executed:

- (i) To give effect to an order under the code;
- (ii) To prevent abuse of the process of the court, and
- (iii) To otherwise secure the ends of justice.

9. He further submitted that the inherent powers Under Section 482 Code of Criminal Procedure through wide have to be exercised sparingly, carefully with great caution and only when exercise is justified by the test specifically laid down in this Section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.

10. Mr. T. Ete, the learned Additional PP for the State has fairly agreed with the contention of the petitioner. He has also conceded with the submission made by the learned counsel for the petitioner and while supporting the submission of the petitioner has quoted the decision of the Hon'ble Supreme Court in the case of **C. Muniappan**

and Ors Vs. State of Tamil Nadu reported in **(2010) 9 SCC 567**, wherein at para 35 and 36, it held that:

“35. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC. However, we do not agree with the further submission that absence of a complaint under Section 195 Cr.PC falsifies the genesis of the prosecution's case and is fatal to the entire prosecution case.

36. There is ample evidence on record to show that there was a prohibitory order; which had been issued by the competent officer one day before; it had been given due publicity and had been brought to the notice of the public at large; it has been violated as there is no denial even by the accused persons that there was no 'Rasta Roko Andolan'. Unfortunately, the agitation which initially started peacefully turned ugly and violent when the public transport vehicles were subjected to attack and damage. In such an eventuality, we hold that in case the charges under Section 188 IPC are quashed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned.”

11. The learned Additional PP while supporting the submission made by the learned counsel for the petitioner has further cited the decision of the Hon'ble Supreme Court in the case of **Jagdish and Ors Vs. State of Haryana in Criminal Miscellaneous No. M-10295 of 2015** reported in **(2015) SCC OnLine P&H 11314**, the relevant paragraphs are reproduced herein below:

“5. During the course of arguments, learned State counsel has not been able to dispute above said legal aspect of the case. Even otherwise, such a question came up to for hearing before Division Bench of this Court in

case [Jiwan Kumar vs. State of Punjab & others](#), 2009(1) High Court of Punjab & Haryana at RCR (Criminal) 415 and it was categorically observed that it would not be open to the police to register a case against the offender for offence under [Section 188](#) IPC and then to submit a report under [Section 173](#) Cr.P.C. to the concerned court. Here it would be appropriate to reproduce the relevant paragraph of above referred judgment which reads as under:-

"8. Coming to the attack of the petitioner in regard to the registration of the F.I.R., it may be noticed that proceedings under [Section 188](#), Indian Penal Code can only be initiated on the basis of a complaint in writing of the public servant concerned made to the Court or to some other public servant to whom he is administratively subordinate. [Section 195\(1\)](#) of the Code restraints the Court from taking cognizance of any offence punishable under [Section 188](#), Indian Penal Code unless a complaint in writing is made to it by the public servant concerned. In other words, no FIR can be registered by the police. It would not be open to the police to register a case against the offence for offence under [Section 188](#), Indian Penal Code and then to submit a report under [Section 173](#) of the Code to the concerned Court. Reliance in this regard can be placed on [Jagtar Singh v. Union Territory, Chandigarh](#), 1996 (1) RCR 669, where in this Court held as under :

"These facts are not disputed. Language of [Section 195\(1\)](#) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence the provisions of [Criminal Procedure Code](#) or Penal Laws have to be strictly construed so as to be given meaning except what is intended by the Legislature in the language used itself. The relevant portion of Section is that, "No Court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate". The intention appears to be clear that where an offence is committed under [Section 188](#), Indian Penal Code, the Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned Court is dependent upon the complaint in writing by such officer or an officer superior to such officer.

High Court of Punjab & Haryana at The counsel for the petitioner has relied upon [Sawaran Singh v. The State of Punjab](#), 1994(3) Recent CR 352 and [Bhagat Ram v. The State of Punjab](#), 1991(1) Recent CR 192. In both these cases the Court has indicated that the scope of [Section 195\(1\)](#) of the Code does not contemplate investigation in a normal way by the police and filing of the challan, but the complaint has to be presented directly to the concerned Court. In the present case though the complaint is stated to be addressed to the Court, but as it appears it was not presented to the Court and the Court did not pass any orders at that stage."

6. *Adverting to the facts of the case in hand, FIR in question was registered against the petitioners on December 1, 2014 under [Section 188/34](#) IPC. Thereafter, petitioners were arrested and interrogated, and after completion of investigation, final report under [Section 173\(2\)](#) Cr.P.C. was presented against them before learned Jurisdictional Magistrate.*

7. *From the above referred legal proposition as well as the factual matrix of the case, it is abundantly clear that registration of FIR is nothing but is in complete violation of legal proposition as well as settled canons of law, especially, in the circumstances that admittedly, no complaint in writing by Public Servant concerned has been moved as is required under [Section 195\(1\)](#) Cr.P.C. Thus, registration of FIR and commencement of proceedings qua petitioners is impermissible under the provisions of [Code of Criminal Procedure](#). Thus, it deserves to be quashed."*

12. To bolster his submission, the learned Additional PP has also relied upon the decision of the Hon'ble High Court in the case of ***Jeevanandham Vs. State Rep. by Inspector of Police*** reported in ***(2018) 2 LW(Cri) 606***, the relevant paragraph wherein the Hon'ble Court has given some guidelines at Para 25, is reproduced herein below:

"25. *In view of the discussions, the following guidelines are issued insofar as an offence under [Section 188](#) of IPC, is concerned:*

a)A Police Officer cannot register an FIR for any of the offences falling under [Section 172](#) to [188](#) of IPC.

b)A Police Officer by virtue of the powers conferred under [Section 41](#) of Cr.P.C will have the authority to take action under [Section 41](#) of Cr.P.C., when a cognizable offence under [Section 188](#) IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under [Section 188](#) of IPC.

c)The role of the Police Officer will be confined only to the preventive action as stipulated under [Section 41](#) of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of [Section 188](#) of IPC.

d)In order to attract the provisions of [Section 188](#) of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii)that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and

iv)that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

e)The promulgation issued under [Section 30\(2\)](#) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f)The promulgation through which, the order is made known must be by something done openly and in public and private information will not be

a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g)No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under [Section 172](#) to [188](#) of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

h)The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.”

13. The learned Additional PP further submits that as per the above guidelines, the Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC. However, in the instant case, the Inspector of the Police Station has lodged complaint, registered and investigated into which is not permissible as per the law and the guidelines in the above referred case of ***Jeevanandham Vs. State Rep. by Inspector of Police*** (Supra). He further submits that in order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect that there must be an order promulgated by the public servant; that such public servant is lawfully empowered to promulgate it; that such promulgation which is disobeyed by the accused person causes or tends to cause obstruction, annoyance or risk of it to any person lawfully employed or danger to human life, health or safety or a riot or

affray. However, in the instant case, no any order was promulgated by the public servant.

14. Under the above circumstances, the learned Additional PP while supporting the submission made by the learned counsel for the petitioner has submitted that in the instant case the FIR filed by the Inspector which was registered under Section 188/505(1)/186/500/34 IPC, the submission of chargesheet before the Court of Chief Judicial Magistrate and the corresponding GR case No.331/2020 before the learned Court of the Chief Judicial Magistrate, East Siang, Pasighat has to be interfered with.

15. Heard both the learned counsel for the parties. I have also seen and considered the documents placed on record.

16. For better understanding of the present case, we need to understand the offences registered against the accused and the procedure prescribed for proceeding of such penal and other laws. The relevant sections are reproduced herein below:

Section 188 IPC reads as under:

“188. Disobedience to order duly promulgated by public servant.
— Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may

extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 505(1) IPC reads as under:

505. Statements conducing to public mischief-(1)Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

Section 186 IPC reads as under:

“186. Obstructing public servant in discharge of public functions -- *Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”*

Section 500 IPC reads as under:

“500. Punishment for defamation- *Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”*

Section 34 IPC reads as under:

“34. Acts done by several persons in furtherance of common intention- *When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”*

Section 54 of the Disaster Management Act, 2005 reads as under:

“54. Punishment for false warning- *Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine.”*

Section 2(d) Cr.PC reads as under:

“2.(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

Section 195 Cr.PC reads as under:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence-(1)*No Court shall take*

cognizance –

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.] "

17. From the fact and the laws as relied upon by both the learned counsel for the parties, it appears that on 07.04.2020, one Inspector, Sh. Tumke Angu had lodged a written FIR before the Officer-In-Charge of Likabali Police Station against the accused for commission of offences stated in the said FIR. Based on the FIR dated 07.04.2020, the Officer-in-Charge, Likabali PS has registered the above PS case No. 11/2020 under section 188/505(1)/186/500/34 IPC read with Section 54 of the Disaster Management Act, 2005.

18. The above offences except for offence under section 188 IPC registered against the accused petitioner are of non-cognisable offence as defined under Section 2(l) of the Criminal Procedure Code. It also appears that in view of Section 155 (2) of the Criminal Procedure Code, no police officer has the authority to register or investigate a non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial. However, in the instant case, the Inspector of the concerned Police Station who is also the Officer-in-Charge of the Police Station without obtaining a prior necessary mandatory order from the competent jurisdictional Magistrate, has registered the above mentioned non-cognizable offence against the accused/petitioner in violation of the mandatory procedure of the Criminal Procedure Code which is legally not tenable in law.

19. Further, in view of the section 195 of the Criminal Procedure Code, no FIR can be registered against section 188 IPC which is the only non-cognizable offence registered in the said police case. Section 195 of the Criminal Procedure Code mandates that only a Magistrate can take cognizance of the offences under section 188 IPC and that too on a complaint submitted by the public servant concerned whose duly promulgated order is allegedly violated or of any other public servant to whom he is administratively subordinate.

20. However, in the instant case, nowhere on the record it reveals that any such complaint was lodged before the police or any public servant empowered to promulgate has promulgated any order. Under such circumstances, the question of violation of any such promulgated order does not arise.

21. Upon consideration of the offences lodged against the accused petitioner and the proceeding prescribed for such offences and also considering the various decision of the Hon'ble Supreme Court and the Hon'ble High Court as relied upon by the learned counsel for the parties as referred above, I found sufficient force and logic in the submission made by the learned counsel for the petitioner and the same has been fully supported by the submission made by the learned Additional PP for the State which are bolstered by the above referred decision of the Hon'ble Supreme Court and the Hon'ble High Court.

22. In view of the above, I have no hesitation in coming to the conclusion and hold that as per the provision of law, it is not open to the Inspector of Police to file complaint registered for offences under section 505 (1) and investigate into and also to submit chargesheet in the case, in as much as he has no power and authority under the law to do so.

23. Accordingly, for the reasons stated above, the FIR dated 07.04.2020, registered as Likabali PS case no. 11/2020 under section 188/505(1)/186/500/34 IPC read with section 54 of the Disaster

Management Act, 2005 and the chargesheet no. 45/2021 dated 12.01.2022 submitted by the IO of the case before the Court of the Chief Judicial Magistrate, East Siang District in GR case No. no.331/2020 are hereby set aside and quashed.

24. With the above observation, this criminal petition is allowed and disposed of.

25. Send back the record, if any.

JUDGE

Comparing Assistant