



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 1447 OF 2026

BETWEEN:

SRI N L NARENDRABABU
AGED ABOUT 65 YEARS
S/O N.A.LAKSHMAN,
NO.904, 6TH MAIN, 9TH 'A' CROSS,
WEST OF CHORD ROAD, 2ND STAGE,
MODI EYE HOSPITAL,
BENGALURU - 560 086.

...PETITIONER

(BY SRI. ANITHA S.M.PATIL, ADVOCATE)

AND:

1. THE STATE BY S J PARK POLICE
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT COMPLEX
BENGALURU - 560 001.

2. SRI.M.R.SATHISH,
POLICE INSPECTOR,
S.J. PARK POLICE STATION
BENGALURU CITY - 560 001.

...RESPONDENTS

(BY SRI. B.N.JAGADEESHA, ADDL.SPP)



THIS CRL.P FILED U/S.482(FILED U/S.528 BNSS) CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.1415/2022 PENDING BEFORE THE 6TH ADDITIONAL CJM BENGALURU FOR OFFENCE P/US/ 188 OF IPC AND SEC.103 OF K.P.ACT, ETC.,

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

Heard the learned counsel, Smt.Anitha.S.M.Patil appearing for the petitioner and Sri.B.N.Jagadeesha, learned Additional State Public Prosecutor for the respondents.

2. The issue springs from a complaint registered by the police for offence punishable under Section 188 of the Indian Penal Code. It is by now too well settled a principle of law that Section 188 offence must spring from the officer who has promulgated a notification of such



offence, not the police. The protest revolves around the procession during the period of COVID-2019.

3. This Court had considered the very same issue and obliterated the proceedings against the petitioner therein in the case of **Mr.AAKANSH KOUDINYA Vs. STATE OF KARNATAKA AND ANOTHER** in **Criminal Petition No.9107 of 2024** disposed of on **17th September, 2024**. The reasons so rendered by this Court at paragraph No.4 would straight away become applicable to the facts obtaining to the case at hand, which reads as under:

"4. This Court in Crl.P.No.10044/2022 has held as follows:

"7. The afore-narrated facts are not in dispute. The Police Officer i.e., the 2nd respondent is the complainant. The allegation against the petitioners on the incident, is as narrated hereinabove, which does not require reiteration. The crime is registered in Crime No.271 of 2019 for offences punishable under Sections 143, 147, 353 and 149 of the IPC. There was no offence registered under Section 188 of the IPC laid at the time of registration of crime. The Police file a charge sheet after investigation, after 22 months i.e., on 05.10.2021. Here the offence under Section 188 of the IPC is added. Whether Section 188 of the IPC can become an offence without it being registered by an authorized officer as that creates a bar under Section 195 of the Cr.P.C. is what is required to be considered. The consideration of which, need not detain this Court for long or delve deep into the matter. This Court in **SHASHIKALA K.S. V. STATE OF KARNATAKA**



in **Criminal Petition No.6812 of 2023** decided on **08.09.2023**, has held as follows:

"....

2. The petitioner is before this Court calling in question the proceedings in C.C. No.7453/2013 registered by Subramanyanagar Police Station, Bengaluru City in Crime No.100/2013, dated 22.04.2013 for the offences punishable under Sections 171B, 171E & 188 read with Section 34 of the IPC.

3. Learned counsel appearing for the petitioner would submit that qua the other accused, this Court has already quashed the proceedings arising out of the very same crime. This Court in the case of Dr. C.N. Ashwathnarayan S/o. T.K. Narayanappa Vs. the State of Karnataka and another in CrI.P. No.9407/2017, disposed off on 24th April 2018, wherein it is held as under:

"Petitioner is seeking for quashing of the proceedings in C.C.No.7453/2013 pending on the file of VII Addl. Chief Metropolitan Magistrate, Bangalore, registered for the offence punishable under Sections 171(B), 171(E) and 188 r/w Section 34 of IPC on the basis of complaint lodged by second respondent herein. 2. The gist of prosecution case is; second respondent was on election duty in Malleshwaram Constituency No.157 as MCC Flying Squad-Executive Magistrate and while discharging his duties on 21.04.2014, he received information that accused No.1, who is a yoga guru, had arranged a meeting at Kranthiveera Sangollirayann Park falling within the jurisdiction of Subramanya Nagar Police Station and a meeting was being held under the leadership of said yoga guru and in that meeting, petitioner, who was a candidate at Malleshwaram Vidhana Sabha Constituency along with local Corporator Smt. Shashikala Krishnegowda was participating in the said meeting held by yoga guru Sri. Subhash and after the meeting, breakfast had been arranged without obtaining permission from the Election Officer and on reaching the venue, he found such meeting being held. Hence, alleging that accused had violated election rules, a



complaint came to be lodged, which was registered in Cr.No.100/2013 and after completion of investigation, charge sheet came to be filed against petitioner for the offences punishable under Sections 171(B), 171(E) and 188 r/w Section 34 of IPC. Hence, petitioner is before this Court calling in question the registration of same and praying for quashing of said proceedings. 3. Heard Sri.Shanthi Bhushan.H, learned counsel appearing for petitioner and Sri.Rachaiiah, learned HCGP appearing for first respondent – State. Perused the records. 4. As could be seen from the case records, offences alleged against petitioner are punishable under Sections 171(B) and 171(E), which are cognizable offences and as such, prior to registration of FIR, jurisdictional police ought to have obtained permission from the jurisdictional magistrate, which is conspicuously absent in the instant case. Insofar as, offences punishable under Section 188 of IPC, the bar contained in Section 195 of Cr.P.C. would come into play namely, prosecution can be initiated for said offence only by a competent officer by filing a complaint before the Court as otherwise the Court before whom proceedings is continued on the basis of police report, would not be empowered to take cognizance of said offence. 5. In the instant case, prosecution has been initiated for the offence committed under Section 188 of IPC on the basis of a police report and not on the basis of complaint lodged in writing by the competent officer, who is empowered to do so. In that view of the matter, proceedings initiated against petitioner if allowed to be continued and is directed to undergo the ordeal of trial, it would be an abuse of process of law."

4. Insofar as the other accused is concerned, the Co-ordinate Bench of this Court has quashed the proceedings in the case of Subhash Vs. the State of Karnataka and another in CrI.P.No.9234/2017, disposed off on 22nd June 2018, wherein it is held as under:

"2. Petitioner is arrayed as accused no.2 in C.C.No.7453/2013 pending on the file of VII Addl. CMM Court, Bangalore registered for the offences punishable under Sections 171(B), 171(E), 188 read with Section 34 IPC on the basis of the final



report submitted by the 2nd respondent under Section 173 Cr.P.C. 3. This Court had an occasion to deal with the same matter so far as accused no.1 is concerned. Ultimately, after a reasoned order, this Court has quashed the proceedings against accused no.1. The same has to be made applicable so far as this petitioner is concerned. 4. This Court has categorically observed that under Sections 171B and 171E they are non-cognizable offences and so far as offence under Section 188 IPC the Police have no jurisdiction to investigate in view of the bar contained in Section 195 Cr.P.C. Therefore, considering the said legal lacunae in the case, the Court has quashed the proceedings against accused no.1. Under the above said circumstances, the same order holds good so far as the petitioner is concerned."

5. In the light of the aforesaid orders answering the issue that is called in question in the case at hand, the further consideration or deeper dwelling in the matter would become unnecessary."

It is also germane to notice the judgment of the High Court of Madras in the case of **JEEVANANDHAM v. STATE** reported in **2018 SCC OnLine Mad 13698**, wherein it is held as follows:-

"19. From the above judgments, it is clear that in order to prosecute an accused for an offence punishable under Section 188 of IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code, else, such action is rendered void ab initio. The object of the provision is to provide for a particular procedure, which gives authority only to the public servant. The legislative intent is to prevent an individual or a group of persons from facing criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will, or frivolity of disposition and to save the time of Criminal Courts from being vexed by endless prosecution. Section 195 of Cr.P.C. is an expansion to the general rule contained under Section 190 of Cr.P.C, wherein, any person can set the law in motion by making a complaint.



20. Therefore, it is very clear from the above judgments that there must be a complaint by a public servant, who is lawfully empowered, whose lawful order has not been complied with. The provisions of Section 195 of Cr.P.C. are mandatory and non-compliance, with it, will make the entire process void ab initio, being without jurisdiction.

21. The submission of the learned Additional Public Prosecutor to the effect that Section 188 of IPC is a cognizable offence, and therefore, the Police Officer is entitled to proceed under Section 154, 156 and 157 of Cr.P.C, is not sustainable. The offence being cognizable by itself, does not enable the Police Officer to register an FIR for an offence under Section 188 of IPC. The reason being, such registration of an FIR has to necessarily end with a Police Report under Section 173(2) of Cr.P.C, which is specifically barred under Section 195 of Cr.P.C. The definition of a complaint under Section 2(d) of Cr.P.C. itself makes it clear that a complaint does not include a Police Report. The Hon'ble Supreme Court has gone to the extent of saying that such a Final Report, which is taken cognizance will make the entire proceedings void ab initio which would necessarily mean that the registration of the FIR for an offence under Section 188 of IPC will also become void.

22. There is one more analogy, which can be used here. Section 195(1)(b) of Cr.P.C. prohibits any complaint for an offence that is committed during Court proceedings. Such offence committed during Court proceedings like forgery, impersonation, perjury etc., by itself may be cognizable in nature, but that does not empower the Police Officer to register an FIR and complaint in such cases can be given only by the Court concerned. Therefore, the nature of the offence does not give a right to the Police Officer to register an FIR and investigate and file a Final Report, when those offences fall within the category enumerated under Section 195 of Cr.P.C. Therefore, the arguments of the learned Additional Public Prosecutor in this regard is not sustainable.

23. The next argument of the learned Additional Public Prosecutor to the effect that since



HC-KAR

NC: 2026:KHC:28473
CRL.P No. 1447 of 2026

a Police Officer is also a public servant under Section 21 of IPC, his Final Report filed before the Court under Section 173(2) of Cr.P.C. must be construed as a complaint under Section 195(1) (a) (i), is also not sustainable. The word used under Section 188 of IPC is "public servant lawfully empowered" and the word used in Section 195(1)(a)(i) is "public servant concerned". The very terminology that has been used in the provision makes it clear that not all public servants falling under Section 21 of IPC can give a complaint in writing, it is only the public servant who has been specifically authorised, by a specific order in this regard, who can file a written complaint before the concerned Judicial Magistrate Court.

24. It is true that a Police Officer by virtue of the power given under Section 41 of Cr.P.C, will have the authority to arrest a person, without any warrant or order from a Magistrate, when a cognizable offence is committed in his presence or in order to prevent the committing of a cognizable offence. This power by itself will not vest the Police Officer to register an FIR for an offence under Section 188 of IPC. After the arrest, the concerned Police Officer is duty bound to inform the public servant authorised about the offence committed under Section 188 of IPC and the public servant thereafter, has to proceed in accordance with the procedure under Section 195(1)(a)(i) of Cr.P.C. In other words, the power of the Police Officer to arrest a person committing a cognizable offence, is only a preventive action and thereafter the procedure to be followed is guided by Section 195(1)(a)(i) of Cr.P.C.

... ..

29. 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."

The High Court of Madras has clearly laid down the guidelines when offence under Section 188 of the IPC is to be alleged. Therefore, the very act of bringing the act as an offence punishable under Section 188 of the IPC in the teeth of the bar under Section 195 of the Cr.P.C. would vitiate the entire proceedings. If further proceedings are permitted to continue in the teeth of the aforesaid facts, where no overt act is even alleged against the petitioners, even in the charge sheet, it would run foul of the judgment of the Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL** reported in **1992 Supp (1) SCC 335**, wherein it is held as follows:

"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.
- (5) **Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.**
- (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) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(Emphasis supplied)”

In Crl.P.No.3329/2023, this Court has held as follows:

“7. The afore-narrated facts are not in dispute and requires no reiteration. It is germane to notice Section 269 of the IPC and Section 51(b) of the Disaster Management Act, 2005. Section 269 of the IPC reads as under:

“269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

Section 51(b) of the Disaster Management Act, 2005 reads as follows:

“51. Punishment for obstruction, etc.—

(a) xxxxxxxx

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to 58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him



HC-KAR

NC: 2026:KHC:28473
CRL.P No. 1447 of 2026

under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences."

Section 269 of the IPC makes one guilty of the offence, if by unlawful or negligent act of any person, results in likelihood of spread of infection of certain diseases, which is dangerous to life. There is no allegation of the kind against the petitioner as is indicated in Section 269 of the IPC that, due to such an act of the petitioner, there was spreading of disease. The issue in the case at hand need not detain this Court or delve deep into the matter as the issue is covered by the order rendered by this Court in Crl.P.No.100332/2022 disposed on 07.02.2022, which covers the issue on all its fours. This Court in the said petition has held as follows:

"3. Brief facts leading to the filing of the present petition as borne out from the pleadings are as follows:

On receipt of credible information of the alleged incident by the complainant-Police Inspector, during his patrolling duty, that some unknown persons were playing cards by violating pandemic lockdown restriction, a raid was conducted and several articles were seized and accordingly, complaint was registered for offences punishable under Sections 188, 269 and Section 80 of the Karnataka Police Act. The police after investigation have filed charge sheet dropping section 188 of IPC, but retaining Section 269 of IPC and Section 80 of the Karnataka Police Act. It is at that juncture, the petitioners have knocked the doors of this Court.

4. The issue with regard to registration of the offences as aforesaid under Section 269 of IPC and Section 80 of the Karnataka Police Act need not detain this Court or delve deep into the matter, as the issue stands covered by the judgment rendered by the Co-ordinate Bench of this Court in the case of Mr.Vishwesh Madane V/s. The State of Karnataka, Tarikeri Police Station in Crl.P.NO.5185/2021 disposed on 19.07.2021 has held as follows:

"7. The complainant on receipt of credible information has lodged a complaint, which has resulted in registering FIR against the accused persons for the offence punishable under Section 80 of the Karnataka



Police Act, 1963, Sections 269 and 271 of IPC and Section 5(1) of the Karnataka Epidemic Diseases Act, 2020.

8. Reading of the complaint averments would clearly go to show that the ingredients for the purpose of attracting Section 269 of IPC is completely absent. The petitioners were all found in a hotel room and therefore, it cannot be said that they were guilty of unlawfully or negligently doing any act which they know or they have reason to believe that it is likely to spread the infection of any disease dangerous to life. It is not the case of the prosecution that any one of the accused persons had tested Positive for COVID-19 and in the absence of any such material, the offence under Section 269 of IPC cannot be prima facie invoked as against the accused persons.

9. In the judgment relied upon by the learned counsel for the petitioner in CrI.A.No.453/2020 rendered by the High Court of Bombay, Nagpur Bench, it has been held that unless the ingredients, which would attract Section 269 of IPC, are found in the complainant averments, the said provision of law cannot be invoked. Further, this Court in Criminal Petition No.2089/2021 DD 08.07.2021 has held that deliberate attempt to invoke Section 269 of IPC with an intention to avoid obtaining permission under Section 155(2) of Cr.P.C. for registration of a case for non-cognizable offences cannot be permitted. Except Section 269 of IPC, the other offences invoked in the present case are all non-cognizable in nature and therefore, prior permission under Section 155(2) of Cr.P.C. is mandatory in nature. In the case on hand, such permission has not been obtained by the prosecution. Further, though it is alleged that the petitioner was indulged in a game of chance, the complaint averments do not state as to how the prosecution has come to a conclusion that the game of cards allegedly played by the petitioner was a game of chance and not a game of skill.

10. Under the circumstances, I am of the considered opinion that the prosecution has abused the process of law by registering a criminal case against the petitioner invoking the alleged offences and therefore, for the purpose of securing the ends of justice, it is necessary to quash the same. Accordingly, I proceed to pass the following:



Order

This Criminal Petition is allowed. The entire proceedings in Crime NO.153/2021 registered by the Tarikere Town Police Station, Chikkamagaluru, for the offences punishable under Section 80 of the Karnataka Police Act 1963, Sections 269 and 271 of IPC and Sections 5(1) of the Karnataka Epidemic Disease Act, 2020 pending on the file of Principal Civil Judge (Sr.Dn.) and C.J.M., Tarikere, Chikkamagaluru, is quashed as against the petitioner.

In view of disposal of the petition, pending I.A. does not survive for consideration. Accordingly, it stands disposed of.

Earlier to the aforesaid judgment, a Co-ordinate Bench of this Court in CrI.P.No.7388/2020 disposed on 02.02.2021. has held as follows:

"7. On perusal of the FIR, case is registered against the unknown persons and the same was registered at about 04:00 p.m., after the arrest, the FIR was also sent to the Court at 05:00 p.m., Having perused the complaint, there is a 6 force in the contention of learned counsel for the petitioners that only in order to take the advantage of non-compliance of Section 155(1) and (2) or Cr.P.C., the prosecution has invoked Section 269 of IPC.

8. No doubt, there was a lock down on the date of the incident and when the credible information was received, the prosecution ought to have registered the case invoking Section 154 of Cr.P.C., It is also important to note that though raid was conducted at 3:00 PM., the FIR was registered at 4:00 p.m. further, the FIR also discloses that the case was registered against unknown persons.

9. complaint discloses that an 12.04.2020, at about 03.30 p.m. complaint and his staff went to the spot and apprehended these petitioners complainant. Material available on record are contrary to each other and hence, this is a fit case to exercise power under Section 482 of Cr.P.C., to quash the proceedings initiated against the petitioners for noncompliance of Section 155(2) of Cr.P.C., Records also disclose 7 that though cognizable offence was taken place, FIR was not registered and before registering the FIR, alleged rapid was conducted".



This Court in Crl.P.No.3432/2023 has held as follows:

"7. The afore-narrated facts are not in dispute. The issue lies in a narrow compass, as to whether the learned Magistrate could have taken cognizance of the offence under Section 51(b) of the Act. To consider the said issue, it is germane to notice certain provisions of the Act. Section 51 of the Act deals with punishment for obstruction and reads as follows:

"51. Punishment for obstruction, etc.—(1) Whoever, without reasonable cause— —(1) Whoever, without reasonable cause—"

- (a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or
- (b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to 58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences.**

(Emphasis supplied)



Section 51(b) of the Act directs that whoever would refuse to comply with any direction given by or on behalf of the Government, as the case would be, become an offence under the Act.

8. Section 60 of the Act deals with cognizance for the offences and reads as follows:

"60. Cognizance of offences.—No court shall take cognizance of an offence under this Act except on a complaint made by—

- (a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or
- (b) **any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid."**

(Emphasis supplied)

Section 60(b) mandates that, if cognizance is to be taken for an offence punishable under Section 51 of the Act, a person who is arrayed as accused should have been given a notice not less than 30 days in the manner prescribed.

9. The prescription is in terms of the Rules. Rules, i.e. the Disaster Management (notice of alleged offence) Rules, 2007. Rule 3 of the said Rules, reads as follows:

"3. Notice of alleged offence and intention to make a complaint .—A notice under clause (b) of section 60 of the Act by a person, of the alleged offence and his intention to make a complaint shall be delivered to, or left at, the office of one of the following -



(a) in the case of the Central Government, except where the complaint relates to a railway, the Secretary incharge of the concerned Ministry or the Department in that Government;

(b) in the case of the Central Government where the complaint relates to a railway, the General Manager of that railway;

(c) in the case of State Government, the Secretary incharge of the concerned Department in that Government;

(d) in the case of the National Authority, the Secretary or, if there is no Secretary, the Additional Secretary, of the National Authority;

(e) in the case of a State Authority, the Chief Executive Officer of the State Authority;

(f) in the case of a District Authority, the Chief Executive Officer of the State Authority."

(Emphasis supplied)

The Rule mandates that a notice under Section 60(b) of the Act by any person should be issued on/of his intention to make a complaint, and that shall be delivered to the person against whom complaint is said to be made. The manner of issuance and delivery are narrated from (a) to (f). Therefore, there is prescription under the Rules as to the action to be taken under Section 60(b) of the Act.

10. On the bedrock of the aforesaid mandate under the Act and the Rules, the case at hand requires to be noticed. The incident takes place on 04.01.2021, around 10.30 a.m. and the crime is registered on 04.01.2021 for the offence punishable under Section 51(b) of the Act and Section 188 of the IPC. The learned Magistrate takes cognizance of the offence on 25.01.2022. The order of the learned Magistrate taking cognizance reads as follows:



"Perused the compliant. Complainant is a Public Servant. Hence, recording of Sworn Statement is dispensed with as contemplated u/s.200 of Cr.P.C. cognizance is taken for the offence punishable u/s.51(b) of NDA Act.

I have perused the documents produced by the complainant and considered the allegation made in the complaint. The allegation are supported by documents and if allegations are not denied the same will lead to the conviction of the accused.

There are sufficient materials to issue process against the accused. Accordingly, I proceed to pass the following order:

ORDER

- 1. Register the case as CC.**
- 2. Issue summons against accused no.1 to 9 for the offence punishable u/s. 51(b) of NDA Act.**
- 3. Call on: 26.02.2021."**

(Emphasis added)

The learned Magistrate prior to taking cognizance ought to have noticed the rigor of Section 60(b) as to whether a notice has been issued to the accused in terms of Rule 3 of the said Rules (supra). Ostensibly, the mandate under the Act or the Rules is not followed by the complainant and it is not even noticed by the learned Magistrate prior to the taking of cognizance. It is therefore, contrary to law."

4. In view of the above, the following:

- i) Criminal Petition is allowed.



ii) The proceedings in C.C.No.21415 of 2022, pending before the 6th Additional Chief Judicial Magistrate, Bengaluru, *qua* the petitioner, stand quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

DH
List No.: 2 Sl No.: 25