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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CNR No. DLHC010187022023

+ **CRL.M.C. 3506/2023 & CRL.M.A. 13222/2023**

P ABHIMANYU

.....Petitioner

Through: Mr. B Karunakaran, Mr. K. Balambihai, Mr. Permendra Kumar, Mr. Stalin Abhimanyu, Advs.

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Manoj Pant, APP along with Mr. Vijay Gupta and Mr. Akash Kumar, Advs.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

ORDER

% **16.09.2026**

1. This hearing has been conducted through hybrid mode.
2. The petitioner has instituted the present petition under Section 482 of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'CrPC'] seeking quashing of **FIR No. 167/2021** registered at Police Station Parliament Street, Delhi for the alleged commission of offences punishable under Section 188 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'], Section 3 of the Epidemic Diseases Act, 1897 [hereinafter referred to as 'EDA'] and Section 51(b) of the Disaster Management Act, 2005 [hereinafter referred to as 'DMA'], the charge-sheet dated 22.10.2021 arising therefrom and the order dated 04.12.2021 passed by the learned Metropolitan Magistrate-06, Patiala House Courts, New Delhi, in **CC No. 9821/2021**, whereby cognizance was



taken and summons were directed to be issued to the accused persons.

BRIEF FACTS

3. The present case arises out of a dharna organised by the All Unions and Associations of BSNL [hereinafter referred to as AUAB] at Jantar Mantar. The record reflects that, by a communication dated 14.09.2021, the petitioner and another office-bearer of AUAB had intimated the police about the proposed dharna to be held on 21.09.2021, 22.09.2021 and 23.09.2021 in connection with various demands concerning BSNL. The endorsement appearing on the said communication records its receipt while clarifying that the same was not to be construed as permission for holding the programme.

4. According to the prosecution, approximately 100 workers of AUAB assembled at Jantar Mantar on 23.09.2021 under the leadership of the petitioner and Chandeshwar Singh and commenced the demonstration. It is alleged that the demonstrators were informed through a loudhailer that an order under Section 144 of CrPC was in force in the area and that they were not permitted to hold the said demonstration. They were also asked to maintain physical distancing in view of the COVID-19 pandemic that was prevailing at the time. The prosecution alleges that the demonstrators did not comply with the aforesaid directions and continued with their protest.

5. On the basis of a written complaint made by ASI Lachhu Singh, the aforesaid FIR was registered on the same day. During investigation, the Investigating Officer [IO] is stated to have prepared the site plan, recorded the statements of witnesses and served notices under Section 41A of CrPC upon the petitioner and Chandeshwar Singh. Upon completion of investigation, a charge-sheet dated 22.10.2021 was prepared against both of them in respect of the aforesaid offences.



6. *Vide* order dated 04.12.2021, the learned Metropolitan Magistrate took cognizance of the said offences and directed issuance of summons to the accused persons. The petitioner thereafter approached this Court by way of the present petition. *Vide* order dated 03.10.2023, the proceedings before the learned Trial Court were stayed, and the said interim protection has continued from time to time.

SUBMISSIONS ADVANCED

7. Learned counsel for the petitioner submits that the concerned proceedings are liable to be quashed as the mandatory statutory procedure governing cognizance of each of the alleged offences has not been followed.

8. The learned counsel submits that Section 195(1)(a)(i) of the CrPC expressly bars a Court from taking cognizance of an offence under Section 188 of the IPC except upon a written complaint by the public servant concerned or by a public servant to whom he is administratively subordinate. That section 2(d) of the CrPC specifically excludes a police report from the definition of a complaint and therefore, the prosecution could not have been initiated through an FIR and thereafter placed before the learned Magistrate by way of a police report under Section 173 of the CrPC. Reliance in this regard is placed on ***C. Muniappan v. State of T.N., (2010) 9 SCC 567***, to submit that compliance with Section 195 of the CrPC is mandatory and that cognizance taken in breach thereof is without jurisdiction.

9. It is further submitted that the document described in the list of documents as a “*Certificate U/s Section 195 Cr.P.C*” cannot be treated as a valid statutory complaint. That even if the said document, dated 29.10.2021, is now described as a complaint signed by the concerned ACP, it was obtained after registration of the concerned FIR thereby forming part of the police



report arising therefrom. It is also submitted that it was not independently presented before the learned Magistrate in the manner contemplated under Section 195 of the CrPC. The learned counsel states that such subsequent documentation cannot cure the foundational defect in the very institution of the prosecution. Reliance in this regard is also placed on ***Shubham v. State of Haryana, 2022 SCC OnLine P&H 4072*** to contend that the requirement of a complaint under Section 195 cannot be circumvented by first registering an FIR and thereafter filing a police report.

10. Learned counsel further submits that Section 60 of the DMA bars cognizance of an offence under the Act except upon a complaint by the authorities or officers specified therein, or by a person who has given the prescribed notice. That no such complaint by a competent authority under Section 60 of DMA was placed before the learned Magistrate. That the FIR and the charge-sheet filed by the police cannot substitute the statutory complaint mandated under the said provision.

11. Insofar as Section 3 of the EDA is concerned, it is submitted that Section 3(1) makes the disobedience of an order or regulation punishable in the manner provided under Section 188 of the IPC. That consequently, the bar contained in Section 195 of the CrPC would equally apply. It is further submitted that the allegations in the FIR also do not disclose any act of violence against healthcare service personnel or any damage to property so as to attract the aggravated offences under the Act. It is also submitted that any offence falling under Section 3(2) or Section 3(3) is required, by virtue of Section 3A(2), to be investigated by an officer not below the rank of Inspector and that in the present case, the investigation was conducted by an Assistant Sub-Inspector.



12. It is, therefore, submitted that the case falls within categories (1) and (6) enumerated in ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***, since the allegations do not disclose the ingredients of the offences invoked and there are express statutory bars against the institution and continuance of the proceedings. Reliance in this regard is placed on ***State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699***, to submit that the inherent jurisdiction of this Court may be exercised to prevent the criminal proceedings from degenerating into an instrument of harassment. That as the defects are jurisdictional and incurable, the petitioner cannot be relegated to the stage of charge. It is on the basis of these submissions, that the FIR, charge-sheet and all consequential proceedings are, therefore, sought to be quashed.

13. Per contra, learned APP for the State opposes the petition for quashing and submits that the FIR and the charge-sheet disclose the commission of the alleged offences. That on 23.09.2021, nearly 100 members of the AUAB assembled at Jantar Mantar under the leadership of the petitioner and continued with the demonstration despite the prohibitory order under Section 144 of the CrPC being in force.

14. It is submitted that the ACP and the SHO present at the spot repeatedly informed the protestors through a loudspeaker that demonstrations were prohibited in the area. That they were also warned about the prevailing COVID-19 pandemic and were directed to maintain social distancing and disperse from the spot. It is further submitted that despite being made aware of the prohibitory order and the applicable COVID-19 restrictions, the petitioner and the other protestors continued with their demonstration. The allegations, therefore, as per the learned APP for the State *prima facie* disclose deliberate disobedience of an order duly promulgated by a public servant and



attract Section 188 of the IPC.

15. Learned APP further submits that the requirement under Section 195(1)(a)(i) of the CrPC has been duly complied with. That the document mentioned at serial No. 5 of the list of documents, though described as a "*Certificate*" is in substance a written complaint under Section 195 of the CrPC. Drawing the attention of this Court to the respect dates of filing of the complaint as well as the chargesheet, the learned APP submits that this is not a case where cognizance has been taken in the absence of a complaint by the competent public servant. He contends that the description of the document as a certificate in the list of documents cannot take away its substantive character as a complaint.

16. It is further submitted that Section 4 of the CrPC permits offences under other enactments to be investigated, inquired into and tried in accordance with the Code, subject to any special procedure prescribed by the concerned enactment. That the existence of a written complaint under Section 195 of the CrPC answers the petitioner's objection insofar as the offence under Section 188 of the IPC is concerned.

17. Learned APP further submits that the objections concerning Section 60 of the DMA and the provisions of the EDA may, at best, be raised before the learned Trial Court at the stage of consideration of charge. That the petitioner would be at liberty to seek discharge from any particular offence if its statutory ingredients are not made out but those objections cannot, however, furnish a ground to quash the entire FIR and charge-sheet when the material on record *prima facie* discloses an offence under Section 188 of the IPC.

18. Lastly, it is submitted that the reliance placed on *State of Haryana v. Bhajan Lal* is misplaced. Learned APP submits that there is no express legal



bar to the proceedings since a written complaint under Section 195 of the CrPC forms part of the record. That the allegations, if taken at their face value, disclose that the petitioner continued with the demonstration despite having been informed of the prohibitory order. It is on the basis of the aforesaid that the learned APP states that the petition, therefore, raises matters to be considered at the stage of charge and is liable to be dismissed.

ANALYSIS AND FINDINGS

19. This Court has heard the learned counsels for the parties and has perused the material placed on record.

20. It is well settled, that at the stage of exercising inherent jurisdiction under Section 482 CrPC, this Court is not required to test the truthfulness of the prosecution's case or weigh the evidence as if conducting a mini trial, but the allegations and the material that is collected during investigation must nevertheless be compared with the essential ingredients of each offence to see whether an offence is *prima facie* made out or not or whether the inquiry or the investigation initiated is barred because of the absence of compliance with the statutory procedure prescribed. The caution against undertaking a disputed factual enquiry, as stated in ***State of Haryana v. Bhajan Lal***, [*supra*] also does not dispense with this basic legal scrutiny.

21. A reading of Section 188 IPC shows that it applies where a person, with knowledge of an order duly promulgated by a public servant lawfully empowered to issue it, disobeys the direction contained therein and such disobedience causes, or tends to cause, obstruction, annoyance or injury, or danger to human life, health or safety. The Explanation to the provision at the same time also makes it clear that an intention to cause harm is not essential. What is material, is knowledge of the order, disobedience thereof and the



consequence, or likely consequence, contemplated by the provision.

22. Now the allegations contained in the FIR must be examined in light of the aforesaid requirements. The prosecution's case is that an order under Section 144 CrPC was in force at the time at Jantar Mantar, where approximately 100 persons assembled under the leadership of the petitioner. It is alleged, that the demonstrators were informed of the prohibitory order through a loudhailer and were directed to disperse and maintain physical distancing, yet, they continued with the said demonstration during the COVID-19 pandemic. Taken at their face value, these allegations *prima facie* indicate the existence of an order, knowledge thereof, its alleged disobedience and the likelihood of danger to human health or safety but whether the order was duly promulgated, whether the petitioner had actual knowledge thereof and whether the alleged disobedience resulted in, or was likely to result in, the prescribed consequences are matters requiring an assessment of evidence at the appropriate stage.

23. Section 195(1)(a)(i) of the CrPC, however, imposes a condition precedent upon the Court's power to take cognizance of an offence under Section 188 IPC. In view of Section 2(d) of the CrPC, a police report is not a complaint and the charge-sheet, by itself, cannot satisfy the statutory requirement. The provision aforesaid, nevertheless operates as a bar on cognizance but does not prohibit registration of an FIR or investigation of the cognizable offence. In ***C. Muniappan v. State of T.N., [supra]***, the Supreme Court held that the written complaint contemplated under Section 195 CrPC is mandatory and that cognizance taken in its absence is without jurisdiction. The distinction between investigation and cognizance has since been reiterated in ***Devendra Kumar v. State (NCT of Delhi), 2025 SCC OnLine***



SC 1753. A Coordinate Bench of this Court in ***Mohd. Anwar v. State (NCT of Delhi)***, 2025 SCC OnLine Del 4951 also held, that the requirement stands satisfied where a written complaint by the competent public servant is placed before the Court along with the charge-sheet and cognizance is taken on its basis.

24. In the present case, the charge-sheet was prepared on 22.10.2021. Before it was filed and before cognizance was taken, the concerned ACP made a written complaint dated 29.10.2021 under Section 195 CrPC. The complaint is addressed to the learned Metropolitan Magistrate, identifies ***FIR No. 167/2021*** and both accused, sets out the alleged disobedience and expressly requests that cognizance be taken. Although described in the list of documents as a certificate under Section 195 of the CrPC, its substance is that of a case-specific written complaint. The complaint accompanied the charge-sheet and formed part of the material placed before the learned Magistrate, who recorded that the file had been perused before taking cognizance on 04.12.2021. The mere fact that the complaint was transmitted along with the charge-sheet, or that the cognizance order does not separately reproduce its contents, does not convert the complaint into a police report or establish that cognizance was taken on the police report alone. ***Shubham v. State of Haryana, [supra]***, is distinguishable, since the complaint considered therein was an omnibus complaint relating to 206 FIRs and lacked case-specific particulars. The requirement under Section 195 CrPC is, therefore, satisfied in the present case. Accordingly, no ground is made out to quash the proceedings under Section 188 of the IPC at this stage.

25. The invocation of Section 3 of the EDA is required to be considered on the limited question of whether the investigation was conducted by an officer



competent to conduct such investigation as per the special statute. Section 3A of the EDA begins with a non obstante clause and clause (ii) thereof expressly provides that any case registered under Section 3(2) or Section 3(3) shall be investigated by a police officer not below the rank of Inspector.

26. The expression “*shall be investigated*”, when read with the prescription of a minimum rank, makes the requirement mandatory in nature. It is not merely a matter of internal or administrative allocation of the investigation but a statutory restriction upon the class of the police officer authorised to undertake such investigation.

27. In the present case, it is not disputed that the investigation was conducted by an Assistant Sub-Inspector [ASI]. An ASI is below the rank of Inspector and, therefore, does not satisfy the minimum rank expressly prescribed for under Section 3A(ii) of the EDA.

28. The investigation in respect of the offence under Section 3 of the EDA was thus undertaken by an officer below the rank statutorily prescribed. Therefore, the charge-sheet, insofar as it relates to the said offence, and the proceedings emanating therefrom rest upon an investigation conducted contrary to the mandatory procedure prescribed by the special enactment. The defect goes to the statutory competence of the officer who conducted the investigation and cannot be treated as a curable irregularity.

29. Insofar as the offence under Section 51(b) of the DMA is concerned, the only question requiring consideration is whether the mandatory condition contained in Section 60 of the DMA, governing the taking of cognizance, has been complied with or not.

30. Section 60 of the DMA places an express embargo upon the power of a Court to take cognizance of an offence under the said enactment, that it can



only be taken upon a complaint made by an authority or officer specified in clause (a) thereof, or by a person who has complied with the notice requirement prescribed under clause (b).

31. In the present case, no complaint made under Section 60 of the DMA by any of the authorities or officers specified therein was placed before the learned Magistrate. Nor does the record disclose a complaint by any person after compliance with the notice requirement under clause (b). The complaint made under Section 195 of the CrPC in relation to the offence under Section 188 of the IPC cannot substitute the complaint mandatorily required under Section 60 of the DMA, since it neither purports to have been made under the DMA nor is shown to satisfy the requirements of Section 60 thereof. The condition precedent for taking cognizance of the offence under Section 51(b) of the DMA is, therefore, also not satisfied.

32. Having examined each offence separately, the remaining question is whether the proceedings must stand or fall as a whole.

33. In **Arun Singh v. State of U.P., (2020) 3 SCC 736** the Supreme Court tested the ingredients of each offence independently, quashed the charge under Section 493 of the IPC and permitted the prosecution under Sections 3 and 4 of the Dowry Prohibition Act, 1961 to continue.

34. In **Ishwar Pratap Singh v. State of U.P., (2018) 13 SCC 612**, the Supreme Court expressly held that there is no prohibition against quashing a charge-sheet in part and the very same principle was applied in **Hitesh Verma v. State of Uttarakhand, (2020) 10 SCC 710**. The present case also, as is being enumerated from the discussion above, requires an offence-specific conclusion based upon the ingredients and statutory procedure applicable to each charge.



35. In light of the aforesaid discussion, the allegations and the complaint under Section 195 CrPC provide a *prima facie* basis for continuation of the proceedings under Section 188 IPC. However, the investigation in respect of the offence under Section 3 of the EDA was conducted contrary to the mandatory requirement under Section 3A(ii) thereof, and the condition precedent under Section 60 of the DMA for taking cognizance of the offence under Section 51(b) thereof was not satisfied. The present case, to that limited extent, also falls within the confines of the categories prescribed in ***State of Haryana v. Bhajan Lal, [supra]***.

36. The present petition is therefore, partly allowed.

37. Accordingly, **FIR No. 167/2021**, registered at Police Station Parliament Street, Delhi, the charge-sheet dated 22.10.2021 and the cognizance order dated 04.12.2021, together with all consequential proceedings emanating therefrom, are quashed qua the petitioner to the extent insofar as they relate to the offences under Section 3 of the EDA and Section 51(b) of the DMA. The FIR and the proceedings arising therefrom in respect of the offence under Section 188 of the IPC shall continue as it is.

38. It is clarified that this Court has not expressed any opinion on the merits of the allegations under Section 188 of the IPC. All contentions available to the parties in relation to the said offence are left open for consideration by the learned Trial Court in accordance with law.

39. The interim stay granted *vide* order dated 03.10.2023 in the present proceedings stands vacated.

40. The pending application stands disposed of.

41. A copy of this order be sent to the concerned learned Trial Court for necessary information and compliance.



42. The order be uploaded on the website *forthwith*.

MADHU JAIN, J

SEPTEMBER 16, 2026/prg/PG