

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 252

Criminal Miscellaneous No.M-10295 of 2015 (O & M)

Date of Decision: July 07, 2015

Jagdish & others

..... PETITIONERS

VERSUS

State of Haryana

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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PRESENT: - Mr. Nipun Vashist, Advocate, for the petitioners.

Mr. Rohit Arya, Assistant Advocate General, Punjab.

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Jaspal Singh, J (Oral)

1. Instant petition has been preferred under Section 482 Cr.P.C. by Jagdish and other petitioners seeking quashing of FIR No.275 dated December 1, 2014 under Section 188/34 IPC, registered at Police Station, Khol, District Rewari and subsequent proceedings emanating from it.

2. Undisputably, above referred FIR has been registered on the basis of a letter written by District Collector, Rewari to

Superintendent of Police, Rewari, under Section 188/34 IPC against the petitioners. The matter was investigated by SHO and ultimately, report under Section 173(2) Cr.P.C. was presented in the Court of learned Jurisdictional Magistrate.

3. The main ground of attack raised by learned counsel for the petitioners is that proceedings under Section 188 IPC can only be initiated on the basis of a complaint in writing moved by Public Servant concerned to the Court or to some other Public Servant to whom he is administratively subordinate. Section 195(1) Cr.P.C. clearly bars the Court from taking cognizance of any offence punishable under Section 188 IPC unless a complaint in writing is made to it by Public Servant concerned.

4. Reverting to the facts of the case in hand, it has been contended by learned counsel for the petitioner that no complaint has been filed by DC or any other Public Servant. Rather, report under Section 173(2) Cr.P.C. has been presented before the Illaqa Magistrate without compliance of provisions contained under Section 195(1) Cr.P.C. As such, FIR as well as subsequent proceedings are liable to be set aside/quashed on this score alone.

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)

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 restrains 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.

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.

8. In the net result, petition is allowed. FIR No.275 dated December 1, 2014 under Section 188/34 IPC, registered at Police

Station, Khol, District Rewari and subsequent proceedings emanating from it are quashed.

July 07, 2015
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(Jaspal Singh)
Judge