

CRM-M-633-2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-633-2014

Date of Decision: 26.03.2015

Sweta Estates Private Limited

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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 ?

Present: Mr. R.S.Madan, Advocate,
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Paramjeet Singh, J.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, 'Code') for quashing of FIR No.457 dated 29.11.2013, registered at Police Station Badsahpur, District Gurgaon, under Section 188 of the Indian Penal Code (for brevity, 'IPC') for the alleged offence of disobedience of prohibition order dated 29.08.2013.

Brief facts of the case are to the effect that the petitioner is the owner of Central Park-II site and is developing a group housing complex at Central Park-II, Sector 48, Gurgaon after obtaining the

CRM-M-633-2014

licence from the Director, Town and Country Planning, Haryana which has been renewed from time to time. Respondent no.2 is the complainant in the impugned FIR, who filed the complaint before the police against the disobedience of Prohibition Order dated 28.09.2013 of respondents no.3 and 4. The petitioner received notice under Section 160 of the Code from the police station on 12.12.2013 and 23.12.2013 to appear and join the investigation. It is also submitted that the impugned FIR is abuse of the process of law. It is further submitted that on 27.09.2013, respondents no.3 and 4 visited the site of the petitioner and satisfied with all the safety measures taken and completed by the petitioner. On 28.09.2013, the petitioner received the Prohibition Order (Annexure P-4) issued by respondents no.3 and 4 under Rule 291 of Haryana Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2005 (for brevity, '2005 Rules'). It is further submitted that no show cause notice under Rule 290 of 2005 Rules was issued to the petitioner either before or after the inspection. No opportunity of hearing was provided to the petitioner before passing the prohibition order. On 12.12.2013, the petitioner received the notice under Section 160 of the Code from Police Station Badsahpur with regard to the impugned FIR. It is further submitted that FIR No.468 has also registered for the same alleged offence and in the same police station. It is further submitted that the petitioner has taken all safety measures as required under the law but the impugned FIR and

CRM-M-633-2014

another FIR No.468 have been registered under Section 188 IPC against the petitioner on the same cause of action and also not in police station in whose jurisdiction, the offence of violation of said prohibition order has been alleged by the respondents. Hence, this petition.

Upon notice, the respondents put in appearance and filed reply with the averments that banks of excavation approximately 25 feet deep are undercut, to such an extent that there is much possibility of landslides involving imminent danger to the safety and life of the workers working in its proximity. The petitioner has not informed in writing the detailed layout plans, methods of construction and schedule of excavation work to the Chief Inspector of Inspection, Haryana, Chandigarh. The petitioner has not provided adequate slopes/steps to protect the workers from the danger of landslide/caving in of the excavation. Therefore, respondents no.3 and 4 had issued prohibition order till remedial measures are taken. On 18.11.2013, respondent no.2 along with Er. T.R.Bishnoi. Joint Director, again visited the site of the petitioner to check the compliance of prohibition order, but found that construction work was still continued, resultantly impugned FIR has been registered for non-compliance of prohibition order.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that in the present case, FIR could not be registered for an offence under

CRM-M-633-2014

Section 188 IPC. With regard to offence under Section 188 IPC, only the Court could only take cognizance on the basis of a complaint in writing by the concerned officer. In support of his contentions, learned counsel for the petitioner has relied upon the decision rendered by a Division Bench of this Court in ***Jiwan Kumar Vs. State of Punjab and others*** 2009(1) R.C.R (Criminal) 415 and decision dated 25.02.2010 rendered by a Coordinate Bench of this Court in CRM-M-6816-2009, titled '***Ashwani Garg vs. State of Punjab and others***'.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the petitioner and contended that impugned FIR has been registered for non-compliance of prohibition order. The impugned FIR has been registered in accordance with law.

I have considered the rival contentions of learned counsel for the parties.

Section 195 of the Code 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*

CRM-M-633-2014

public servant concerned or of some 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 of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

CRM-M-633-2014

(3) *In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.*

(4) *For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-*

(a) *where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;*

(b) *where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."*

As per Section 195 of the Code, no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

In the present case, proceedings against the petitioner under

CRM-M-633-2014

Section 188 of IPC have been initiated on the basis of F.I.R. and not on the basis of any complaint in writing of the public servant concerned as it required under Section 195 (1) (a) of the Code. However, Section 195 of the Code specifically provides that proceedings under Section 188 of IPC can only be initiated on the basis of complaint made in writing by the public servant concerned to the Court. The police has no power to register a case for the offence under Section 188 of IPC and investigate the matter. The registration of FIR for the offence under Section 188 of IPC is not permitted by the Code.

In *Jiwan Kumar's case (supra)*, a Coordinate Bench of this Court has held as under:

“8. Coming to the attack of the petitioner in regard to the registration of the FIR, it may be noticed that proceedings under Section 188 IPC 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 IPC 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 offender for offence under Section 188 IPC 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) R.C.R. (Crl.) 669, wherein 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 IPC, 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 C.R. 352 and **Bhagat Ram v. The State of Punjab** 1991 (1) Recent C.R. 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."*

9. *It is admitted case of respondent No. 3 that FIR No. 128 (P3) was registered against the petitioner on 16.6.2005 under Section 188 IPC. The petitioner was thereafter arrested and interrogated. After the completion of the investigation, the challan (final report under Section 173 of the Code) was presented against the petitioner before learned Chief Judicial Magistrate,*

CRM-M-633-2014

Mansa on 20.12.2005 and the charge was framed on 20.1.2006. Further that the case is now fixed for recording of prosecution evidence.

10. It is, thus, clear that the proceedings against the petitioner under Section 188 IPC have been initiated on the basis of the FIR and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1)(a) of the Code. The registration of FIR and the launching of proceedings thereafter against the petitioner is not permitted by the Code and thus, cannot be allowed to be sustained. Resultantly, the petition is allowed. Promulgation order dated 27.5.2005 (P-2) issued by the District Magistrate, Mansa is quashed. Similarly, FIR No. 128, dated 16.6.2005 registered at Police Station City Mansa under Section 188 IPC (P-3) and all the proceedings taken thereunder against the petitioner are also quashed and set aside.”

In view of above discussion and law laid down in ***Jiwan Kumar's case (supra)***, instant petition is allowed. FIR No.457 dated 29.11.2013, registered at Police Station Badsahpur, District Gurgaon, under Section 188 of IPC along with all the criminal proceedings arising out of the said FIR stands quashed.

26.03.2015
parveen kumar

(Paramjeet Singh)
Judge