

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6265 OF 2016

Shrinath Gangadhar Giram,
Age 23 years, Occupation Agriculturist
The Secretary of Nakshatra Krida va
Sanskratik Mandal, Kortek,
Taluka Sonpeth, District Parbhahi.

...APPLICANT

versus

- 1] The State of Maharashtra
through Police Inspector,
Gangakhed Police Station,
Taluka Gangakhed, Dist. Parbhani.
- 2] Kishor Yogiraj Bhumkar,
Age 30 years, Occ. Service,
R/o. Gangakhed Police Station,
Gangakhed, Tq. Gangakhed,
Dist. Parbhani.

...RESPONDENTS

.....
Mr. Surendra V. Suryawanshi, Advocate for Applicant
Mr. S.Y. Mahajan, APP for Respondent Nos. 1 and 2.

.....
**CORAM : S.S. SHINDE AND
K.K. SONAWANE, JJ.**

RESERVED ON : 10th FEBRUARY, 2017.

PRONOUNCED ON : 23rd FEBRUARY, 2017.

JUDGMENT : (Per : K.K. Sonawane, J.)

1] Rule. Rule made returnable forthwith. The matter is taken up for final hearing on merit with consent of respective learned counsel appearing for both the sides.

2] The applicant assails the action of police of Gangakhed Police Station, District Parbhani for registration of crime No. 494 of 2016, under Section 188 of IPC, on the basis of FIR filed by the respondent No.2 - police personnel Shri Kishor Bhumkar, Police Naik (Buckle No. 1165), of Gangakhed Police Station, District Parbhani.

3] The factual aspects giving rise to the present application are as under :-

[a] The applicant is the Secretary of a Social Club known as, “Nakshatra Krida Va. Sanskrutik Mandal”, Kortek, Tahsil Sonpeth, District Parbhani, which is a public trust registered under the Bombay Public Trusts Act as well as the Societies Registration Act, 1860. According to the applicant, there was a Premises Licence issued by the District Magistrate, Parbhani on 27.9.2016 in favour of the applicant under Rule 93/197 of the Licencing and Controlling Places of Public Amusement (other than Cinemas) and performance of public amusement including Melas and Tamashas, 1960 (hereinafter referred to as, “the Rules of 1960” for sake of brevity). Pursuant to the Performance Licence issued under Rule 102/199 of the aforesaid Rules, 1960, the applicant was authorized to keep the social club

at the site of House No. 722 village Vadgaon Station, Tahsil Sonpeth, District Parbhani. The licence was valid from 27.9.2016 to 31.12.2016. Meanwhile, there was inspection of premises carried out by the Government Personnel and no illegality or imperfection traced out to the concerned authorities. However, on 5.11.2016, the police personnel once again visited the premises for inspection. They carried out the inspection and nothing contrary to the condition of licence was found. Accordingly, they prepared the panchanama to that effect. But, lateron, the applicant came to know that the police personnel Shri Kishore Bhumkar, lodged the FIR against the applicant for the offence punishable under Section 188 of the IPC. Pursuant to the FIR of police personnel - Shri Bhumkar, the concerned Gangakhed Police Station registered the crime No. 494 of 2016 on 5.11.2016, for the offence punishable under Section 188 of IPC and set the criminal law in motion.

[b] The applicant grumbled that there was no contravention or violation of the conditions imposed by the Licencing Authority while issuing the Premises Licence as well as Performance Licence in favour of the applicant. It has been alleged that at about 7.40 p.m., more than 4 persons were found sitting on the table for playing cards. There was one Cigarette Packet of Gold Flake brand containing 3 Cigarettes seen in the Counter Drawer of the social club. Therefore, the police personnel filed the FIR under Section 188 of IPC, for disobedience of the order duly promulgated by the public servant.

[c] Being aggrieved by the action of registration of FIR, filed by the

police personnel for the offence under Section 188 of the IPC, the applicant rushed to this Court and preferred the present application, by invoking remedy under Section 482 of the Code of Criminal Procedure and prayed to quash and set aside the impugned FIR filed by the respondent No.2 - police personnel without any authority.

4] Learned counsel for the applicant strenuously submitted that the impugned FIR is an abuse of process of law and caused injustice to the applicant. The respondent No.2 Police Personnel-Shri Bhumkar has no authority to file FIR directly for registration of Crime under Section 188 of the IPC against the applicant. There was no complaint in writing by public servant concerned to the Magistrate, as required under Section 195(1) of the Cr.P.C. The impugned FIR does not spell out the ingredients of alleged crime committed under Section 188 of IPC. The learned counsel also harped on the circumstance that concerned District Magistrate, Parbhani has issued the premises licence in favour of the applicant by exercising powers under the Rules of 1960. There was no order promulgated by the public servant. Therefore, no question arises of disobedience of the order promulgated by public servant for the offence contemplated under Section 188 of IPC. He further submits that there are no specific allegations against the applicant in the FIR to make out the offence, as alleged, against the applicant. Hence, learned counsel prayed to quash and set aside the impugned FIR registered against the applicant, for the offence punishable under Section 188 of the IPC.

5] In support of his argument, learned counsel for the applicant, relied upon the judicial precedents, in the case of *Jiwan Kumar vs. State of Punjab & others, reported in 2008 Cri.L.J. 3576* and in the case of *Habibur Rahaman vs. Jagannath Mondal and others, reported in 1982 Cri.L.J. 1652*.

6] Per contra, learned APP filed affidavit in reply of first informant police personnel Shri Kishore Bhumkar on record and fervently contended that the applicant has misconceived the provisions of Section 188 of the IPC r/w. Section 195 of Cr.P.C. According to learned APP, the entire police force functioning in the Parbhani District is under the control of District Magistrate of the concerned district. Section 17 of the Maharashtra Police Act, 1951, specifically made a reference regarding the control of District Magistrate over the police force in the District. Therefore, the FIR filed by the first informant - Shri Bhumkar, for the offence punishable under section 188 of IPC is within the ambit of law. There is no illegality or perversity in the process adopted by the police for registration of crime against the applicant. The Premises Licence was issued by the District Magistrate under Rules of 1960. There was disobedience of the conditions imposed by the concerned District Magistrate while issuing licence in favour of applicant. The police personnel noticed more than 4 persons sitting on the table for playing cards. In view of the breach of conditions imposed by the licencing authority, the police of Gangakhed police station initiated the action under penal law against the applicant. Therefore, there is no merit in the application. Hence, learned APP prayed to dismiss the application being devoid of merit.

7] We have given anxious consideration to the arguments advanced on behalf of both the sides. The point which is to be ponder over in this matter is, whether the police personnel - first informant - Shri Bhumkar, has the locus-standi to file FIR, directly to the concerned police station for registration of crime under Section 188 of the IPC, against the applicant ? In order to decide the aforesaid issue, it would be apposite to take into consideration the certain provisions of the IPC, as well as Cr.P.C., which would facilitate to determine this legal issue within the purview of law. At the threshold, the provision of Section 188 of the IPC, is essential to be reproduced, which reads thus :-

“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.

Explanation- It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he

knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

8] In addition to the aforesaid provision, it is imperative to take into consideration the embargo for taking cognizance of an offence punishable under section 188 of IPC, contained in section 195 of Cr.P.C. The provision of Section 195 of Cr.P.C. provides 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 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.

(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”

In view of the aforesaid legal provisions contemplated under section 195 of Cr.P.C., it can be said that no Court shall take cognizance of any offence punishable under sections 172 to 188 of the IPC, except on the complaint in writing of the public servant concerned, or some other public

servant, to whom he is administratively subordinate.

9] The word, “complaint” referred in the above mentioned provision of Section 195 of the Cr.P.C., denotes, “complaint in writing to a magistrate” and “not a police report”. At this juncture, it would be necessary to make reference of definition of the word, “complaint” given in section 2(d) of the Code, which prescribes 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.

Explanation.-A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant”

On conjoint reading of the provision of Section 188 of IPC and Section 195 of Cr.P.C., it is evident that if the alleged offence is punishable under Sections 172 to 188 of IPC, the court cannot take cognizance except on a complaint in writing of the public servant concerned, or some other public servant, to whom he is administratively subordinate. In such peculiar circumstances, no FIR could have been registered by the police for an offence punishable under Section 188 of IPC. The legislative intention appears to be clear from the language of section 195(1) of Cr.P.C. itself, which categorically prescribes that where an offence is committed under Section 188 of IPC, it would be obligatory for the public servant before whom

such offence is committed, to file a complaint before the concerned Magistrate having jurisdiction to take cognizance of it. Therefore, in view of the aforesaid principles of law, the FIR given by the police personnel in the police station, cannot be termed as a “complaint” given to the Magistrate in writing.

10] In the instant case, police personnel Shri Bhumkar directly filed the FIR alleging commission of offence under Section 188 of IPC, for disobedience of the order of District Magistrate by the applicant. The Apex Court in the case of *“C. Muniappan and others vs. State of Tamil Nadu” reported in (2010)9 SCC 567*, in para.28, observed as follows :-

“28. Section 195(1)(a)(i) CrPC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC that any person can

set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in CrPC like Sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those sections. (Vide *Govind Mehta v. State of Bihar*¹, *Patel Laljibhai Somabhai v. State of Gujarat*², *Surjit Singh v. Balbir Singh*³, *State of Punjab v. Raj Singh*⁴, *K. Vengadachalam v. K.C. Palanisamy*⁵ and *Iqbal Singh Marwah v. Meenakshi Marwah*⁶.)

11] The Division Bench of the Punjab and Haryana High Court, has also dealt with the similar situation in the case of “Jivan Kumar vs. State of Punjab and others” (cited supra), which is relied upon on behalf of applicant. In this judicial precedent also, the Division Bench of the Punjab and Haryana High Court, held that the proceeding initiated under Section 188 of IPC, on the basis of FIR, and not on the basis of complaint in writing, of the public servant concerned, as is required under section 195(1) of the Code, is not permissible in law and cannot be allowed to be sustained. The Division Bench of the Calcutta High Court, in the case of **Habibur Rahaman Vs. Jagannath Mondal**, as referred (supra) further observed that mere

1 AIR 1971 SC 1708

2 AIR 1971 SC 1935

3 (1996)3 SCC 533

4 (1998)2 SCC 391

5 (2005)7 SCC 352

6 (2005)4 SCC 370

disobedience of an order promulgated by the public servant is not in itself an offence under section 188 of IPC unless it entails one or other of the consequences which the section itself mentioned. The disobedience, amongst others, cause or tend to cause obstruction or annoyance or injury to any person lawfully employed.

12] In the matter in hand, there are no circumstances on record to show that the disobedience of the condition imposed on the applicant would entail one or the other consequences mentioned in Section 188 of IPC itself. The impugned FIR is silent about the same. In view of the aforesaid specific provisions of law, we are of the considered opinion, that there must be a complaint in writing to the Magistrate, given by the public servant concerned, whose lawful order has not been complied with, as contemplated under Section 195 of Cr.P.C. It is the mandate of the provisions of section 195 and non compliance of it would vitiate the prosecution and all consequential actions.

13] In the above premises, the present application deserves to be allowed and in view of the specific bar contained under Section 195(1) of the Code, the impugned FIR is nothing but an abuse of process of law. It would dissipate the precious time of the Court and no fruitful purpose would be sub-served, for continuation of the proceedings initiated on the basis of FIR of police personnel filed without any authority. Therefore, we have no hesitation to allow the application by exercising powers under Section 482 of the Cr.P.C.

14] In the result, the application is allowed in terms of prayer clause (B). The impugned FIR filed by the police personnel Shri Bhumkar, for registration of crime No. 494 of 2016, under Section 188 of IPC against the applicant is hereby quashed and set aside.

Rule made absolute in above terms. There shall be no orders as to costs.

[K.K.SONAWANE]
JUDGE

[S.S. SHINDE]
JUDGE

grt/-