

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

CRL. MISC. No.M-43561 OF 2015 (O&M)
DATE OF DECISION : 14TH MARCH, 2016

Gurmeet Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Manoj K. Sharma, Advocate for the petitioner.

Mr. Daljeet Singh Virk, DAG, Punjab.

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A. B. CHAUDHARI, J. (ORAL)

CRM-1795-2017

The application is allowed and Annexure P-4 is taken on record, subject to all just exceptions.

CRM-M-43561-2015

Rule heard forthwith with consent of learned counsel for the rival parties.

The petitioner has filed the present petition under Section 482 Cr.P.C. seeking quashing of FIR No.138 dated 10.12.2002 registered under Section 188 IPC at Police Station City Fazilka, District Ferozepur.

The above said FIR was registered by the concerned Police Station officer and thereafter the cancellation report was filed before the trial Court. The said order reads thus:

*“Heard. The present cancellation report be again
sent to concerned police station for
reinvestigation. The original order be retained*

whereas copy of the order be placed with the report u/s 173 of the Cr.P.C. ”

It is clear that the said order, rejecting the cancellation report and ordering re-investigation is sans any reason, which in no case can be upheld. Hence the impugned order is set aside.

That apart, learned counsel for the petitioner has invited my attention to the Division Bench judgment of this Court passed on 18.03.2008 in ***Civil Writ Petition No.772 of 2007*** titled ***Jiwan Kumar versus State of Punjab and others.*** The said judgment was delivered on the provisions of Section 195(1)(a)(i) of Cr.P.C., which reads thus:

(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;

It is thus clear that no FIR could have been registered in respect of offence under Section 188 IPC. It is only on the basis of complaint in writing by the public servant concerned, such complaint would lie. There is definitely an object as to why the legislature provided

the bar for the Court for taking cognizance of the offence under Section 188 IPC.

In that view of the matter the registration of the FIR itself was unwarranted. The trial Court did not consider the above provisions of Section 195(1)(a)(i) Cr.P.C. and landed in error. In my opinion, the Division Bench judgment made by this Court as aforesaid, is squarely applicable to the facts in the instant case. In the result I make the following order:

ORDER

- (i) The CRL. MISC. No.M-43561 OF 2015 is allowed.
- (ii) The FIR No.138 dated 10.12.2002 registered under Section 188 IPC at Police Station City Fazilka, District Ferozepur, is quashed along with all consequential proceedings.

14TH MARCH, 2016
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>