

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. CRM-M-35749 of 2016
Date of Decision: 25.10.2018**

Mannan Goel and another ...Petitioners

VERSUS

State of Haryana ...Respondent

2. CRM-M-6255 of 2017

Sahil Gupta and others ...Petitioners

VERSUS

State of Haryana ...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Vishal Sharma, Advocate
for the petitioners in CRM-M-35749-2016.

Mr. J.S. Bedi, Sr. Advocate with
Mr. Pankaj Katia, Advocate
for petitioners in CRM-M-6355-2017

Mr. Deepak Grewal, DAG, Haryana.

SURINDER GUPTA, J.

Both the above captioned petitions have been filed under Section 482 Cr.P.C. seeking quashing of FIR No. 47 dated 16.02.2016, registered for offences punishable under Sections 188 of Indian Penal Code (for short 'IPC') read with Sections 68 of the Punjab Excise Act, 1914 (as applicable to State of Haryana). Though FIR also mentions offences punishable under Sections 1 and 14 of the Punjab Excise Act, which apparently is a mistake at the time of recording FIR as Sections 1 and 14 appear to have been mentioned in place of number and year of the Punjab Excise Act.

BRIEF FACTS:-

2. FIR was registered on the complaint of Inspector Ajit Singh of Police Station Ambala Cantt., wherein he has stated that on 16.02.2016, he alongwith his police party was present at Swastik Chowk, Ambala Cantt. in connection with night patrolling, when he received a secret information that some persons were creating noise after consuming liquor at Hotel Shangahi near Vijay Rattan Chowk, Ambala Cantt. After apprising some senior officers, he conducted a raid and found that many boys and girls were consuming liquor inside the hotel and were creating noise by playing music at high pitch. He apprehended 27 boys and 06 girls, who have been named in the FIR and found that owner of the hotel, namely, Sanvir Sondhi was serving liquor and permitting dance and music in his hotel till late night. The police after investigation presented challan in Court.

3. Learned State counsel has submitted that challan has been presented for offences punishable under Sections 188 IPC and 68 of the Punjab Excise Act as the accused named in the FIR have violated order promulgated by Deputy Commissioner of Police, Urban Ambala banning use of loud speakers, DJ etc. and they were consuming liquor in hotel at the top floor for which owner of hotel was not possessing any licence.

4. A short question, which arises for consideration in this petition, is as to how the provisions for offence under Sections 188 IPC and 68 of the Punjab Excise Act (as applicable to State of Haryana) are attracted against the petitioners.

5. Learned State counsel during course of arguments has submitted that Hotel Shanghai was possessing licence for serving liquor on a particular floor but liquor was served in upper hall. During course of

arguments, he had sought time to have instructions as to what offence is made out against petitioners (in both the petitions), who were customers of hotel and even if served liquor on a particular floor of the hotel when the hotel was possessing licence for serving the liquor on a different floor?

6. Learned State counsel came out with affidavit of Deputy Superintendent of Police, Ambala Cantt. dated 02.08.2018 stating therein that (i) on police raid it was found that in upper hall of the hotel a crowd of men and women was consuming liquor, raising loud noise and playing high decibel music; (ii) owner of the hotel was serving liquor without permission; (iii) one *hooka* and two boxes of flavoured tobacco were also taken into possession at the spot; and (iv) accused (including petitioners) were consuming liquor at 'public place' without permission, as such, offence under Section 68 of the Punjab Excise Act is made out against them.

7. Learned State counsel during course of arguments has admitted that Hotel Shanghai was having a valid licence for serving the liquor to its customers. However, liquor was being served to its customers on the other floor of the hotel in violation of terms of licence, which permitted the hotel to serve the liquor only on the prescribed floor. He has also argued that owner of the hotel was playing music at high pitch (decibel) and allowing his customers to dance at odd hours thereby violating notification dated 30.01.2016 issued by Deputy Commissioner of Police, Urban Ambala, which prohibits the playing of loud speakers, DJ etc. between 10.00 p.m. to 06.00 a.m.

8. From the submission of learned State counsel firstly it is to be seen as to whether petitioners could be subjected to face trial for offence under Section 188 IPC on police challan without complaint of authority

whose order has been violated? Admittedly, a Magistrate can take cognizance of offence under Section 188 IPC only on the complaint in writing by concerned public servant, who had issued notification and not on the police report. Provisions of Section 195 Cr.P.C. to this effect are mandatory and non-compliance of it would vitiate the proceedings and consequential orders. Reference can be made to observations of Hon'ble Apex Court in case of **C. Muniappan and others vs. State of Tamil Nadu, 2010 (9) SCC 567**, wherein it was observed in para 20 of the judgment as follows:-

“20. Section 195(a)(i) Cr.PC 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 Cr.PC 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 the Cr.PC 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. The State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 SC 1935; Surjit Singh & Ors. v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., AIR 2005 SC 2119).”

9. After discussing the law on the point, Hon'ble Apex Court in case of **C. Muniappan (supra)** observed in para 25 of the judgment as follows:-

“25 Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the

cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.”

10. When enquired, learned State counsel has fairly conceded that in this case no complaint has been made by Deputy Commissioner of Police, Urban Ambala or any superior officer against petitioners. Learned trial Court, as such, cannot take cognizance of offence under section 188 IPC and the FIR registered against petitioners in violation of legal proposition is liable to be quashed.

11. There is another angle to be seen in this case to make out as to whether petitioners/accused mentioned in the FIR have violated order dated 30.01.2016 promulgated by Deputy Commissioner of Police, Urban Ambala. Above order, copy of which was supplied for perusal during arguments by learned State counsel, reads as follows:-

“Now, therefore, in exercise of the powers vested in me of section 144 of Code of Criminal Procedure, 1973 by virtue of Haryana Govt. Notification No. S.O.68/H.A.2008/25/S. 8, 9, 10 and 83/2011 dated 09.08.2011, I Jashandeep Singh Randhawa, IPS, Deputy Commissioner of Police, Urban Ambala do hereby order that use/playing of loud speakers, DJ and other operates of noise in the Markets, Religious Places, Marriages/Social/Religious functions, Jagran, Music Shops etc. beyond the permissible volume and between 10.00 p.m. to 06.00 a.m. is hereby banned/restricted for two months from date of issue.”

12. A question, which arises for consideration, is that even if

allegations in the FIR be believed, who was playing music system or D.J. in the hotel? Certainly petitioners were not playing the same. It was being played by the management of the hotel and if at all anybody can be held liable, is the management of the hotel and not the customers present in the hotel. The instant FIR registered against petitioners for offence punishable under Section 188 IPC is liable to be quashed on this score as well.

13. The next offence for which FIR has been registered is under Section 68 of the Punjab Excise Act as applicable to State of Haryana. Section 68 of the Punjab Excise Act reads as follows:-

*“68. Penalty for offences not otherwise provided for.--
Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule, notification or order made, issued or given thereunder, and not otherwise provided for in this act, shall be punishable for every such act or omission with a fine which may extent to five thousand rupees.”*

14. Learned State counsel was asked to make out as to how provisions of Section 68 of the Punjab Excise Act are applicable to facts of present case. While answering the query to this effect put to him he has referred to the plea taken in para 8 of affidavit dated 02/07.08.2018, which state that the offence under Section 68 of the Punjab Excise Act is made out as petitioners were served liquor at a public place in hotel in the hall for which management of hotel was not possessing licence to serve liquor.

15. Admittedly, petitioners were in hotel at the time of raid, which cannot be termed as public place. Even if it be believed that they were being served liquor there by the management of the hotel in the hall, for which it

was not having licence, it cannot be inferred that liquor was being served at a public place. It is admitted that hotel was having a licence for service of liquor to its customers, which was confined to a particular floor of the hotel. If the management of the hotel had violated the terms of the licence permitting it to serve liquor, the customers in the hotel cannot be held liable. As already discussed, the hotel where the liquor was allegedly being served to petitioners was not a public place and on taking note of facts of case, learned State counsel has candidly conceded that the offence under Section 68 of the Punjab Excise Act is not disclosed from the facts as stated in the FIR.

16. As per provisions of Section 47 of the Punjab Excise Act, any officer of Excise or Police, as per above provision, is not competent to arrest any person for offence under Section 68 of the Punjab Excise Act. The powers have been vested under this section to competent authority i.e. Excise Officer, Police etc. to arrest any person found committing an offence under Section 61 or Section 63 of the Excise Act.

17. From the above discussion, it is apparent that Inspector Ajit Singh, who conducted the raid at the hotel Shanghai on 16.02.2016, had acted beyond his powers while arresting 33 boys and girls, who were present in the hotel. It was a horror for them that they were arrested, taken to police station and subjected to medical check up. Even if there was some violation of the provisions of the Punjab Excise Act by the management of the hotel, Inspector Ajit Singh could certainly refrain management of the hotel from serving the liquor and ask them to switch off the audio system being played there and initiate proceedings against hotel management for offence under Section 188 IPC in accordance with law but instead of

remaining within his powers he overreacted and put 33 boys and girls to a great inconvenience on the pretext that he had intimated the senior officers before conducting the raid. Though, there is nothing that permission for the act of Inspector Ajit Singh had been allowed by senior officers but if the same had been allowed it was also beyond the legal parameters.

18. During course of arguments, Mr. Deepak Grewal, DAG, Haryana has fairly assisted this Court and was having really a tough time while defending the conduct of Inspector Ajit Singh and the sustainability of the instant FIR. I, however, appreciate his fairness to concede that the police has certainly violated the legal proposition and exceeded its powers while apprehending boys and girls at odd hours from a hotel.

19. As a sequel of my above discussion, both the petitions have merit and are allowed. FIR No. 47 dated 16.02.2016, registered for offences punishable under Sections 188 IPC read with Section 68 of the Punjab Excise Act, 1914 (as applicable to State of Haryana) alongwith all consequential proceedings arising therefrom, qua petitioners in both the petitions, is quashed.

October 25, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No