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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 1577/2016 & CrI. M.A. Nos.8186/2016 & 18927/2017**
VED PRAKASH

..... Petitioner

Through Mr. J.K. Chawla and Mr. Vinay
Chadha, Advs.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through Ms. Nandita Rao, ASC for the State.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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24.01.2018

1 The petitioner seeks quashing of FIR No.0243/2016 dated 09.04.2016 registered under Sections 188/291 of the IPC at Police Station Ashok Nagar. The petitioner has been arrayed as an accused on the complaint made by respondent No.3. Respondent No.3 was the Sub-Divisional Magistrate (SDM). Learned counsel for the petitioner argues that this FIR having been registered under Sections 188/291 of the IPC against the petitioner, the mandatory necessary procedure as contained in Section 195 of the Cr.PC had to be adhered to; it has not been followed; in the absence of which, the FIR is liable to be quashed.

2 Record shows that the FIR has been registered on a written complaint made by the SDM.

3 Learned counsel for the respondent, at the outset, submitted that a complaint made by the public servant pursuant to which the FIR has

been registered would not be a procedural illegality and the provisions of Section 195 of the Cr.PC are met with.

4 This Court is not in agreement with the submission of the learned counsel for the respondent. The law on this aspect is very clear. For an offence to be tried under Sections 188/291 of the IPC, the mandatory procedure as contained in Section 195 of the Cr.PC has to be followed. The fact that the procedure contained in Section 195 of the Cr.PC is mandatory is no-longer res-integra and has been reiterated by the Apex Court time and again and lastly in the judgment delivered by the Apex Court in Crl. Appeal No.64/2017 Saloni Arora Vs. State of NCT of Delhi on 10.01.2017. The law laid down by the Apex Court in AIR (1962) SC 1206 Daulat Ram Vs. State of Punjab had been reiterated and the relevant extract of which reads herein as under:-

“There is an absolute bar against the Court taking seisin of the case under S. 182 I.P.C. except in the manner provided by S.195 Crl.P.C.

Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. The offence under S. 182 is complete when a person moves the public servant for action. Where a person reports to a Tehsildar to take action on averment of certain facts, believing that the Tehsildar would take some action upon it, and the facts alleged in the report are found to be false, it is incumbent, if the prosecution is to be launched, that the complaint in writing should be made by the Tehsildar, as the public servant concerned under S. 182, and not leave it to the police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under S. 182 without the Tehsildar’s complaint in writing is, therefore, without jurisdiction ab initio.” (Emphasis supplied)

5 It is clear that even for an offence triable under Sections 188/291 of the IPC, the complaint has to be in writing by the public servant; it cannot be left to the police to put a charge-sheet as has been done in the instant case. The Supreme Court in 2010 (9) SCC 582 in this context, inter-alia noted as under:-

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.

6 The Punjab and Haryana High Court in VOL.CL (2008-2) 675 Jiwan Kumar Vs. State of Punjab while dealing with a FIR which had been registered under Section 188 of the IPC had noted that unless and until, a complaint in writing is made by the public servant concerned, it cannot be said that the mandate of Section 195 of the Cr.PC has been followed; it had in this context inter-alia noted as under:-

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.

7 In the instant case an FIR has been registered. It is not a complaint which is being tried on the basis of a written complaint by

the public servant. The mandate of Section 195 of the Cr.PC has not been followed. Offence under Section 188 of the IPC necessarily contemplates a complaint in writing to be made by the public servant; the cognizance taken upon a FIR and not a complaint in writing by a public servant would be bad.

8 FIR is liable to be quashed. It is accordingly quashed.

9 Petition disposed of in the above terms.

INDERMEET KAUR, J

JANUARY 24, 2018

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