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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34597-2015

Date of Decision : May 14, 2019

Aasif Javed

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Mohammad Arshad, Advocate,
for the petitioner.

Mr. Ashish Sanghi, DAG, Haryana,
for respondent-State .

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of FIR No. 201 dated 3.10.2015 under Section 188 IPC registered at Police Station Nagina, District Mewat (Annexure P/2) and all subsequent proceedings arising therefrom.

2. Facts relevant for the purpose of decision of the present petition; that the above mentioned FIR was registered at the instance of respondent No.2 with regard to violation prohibitory order under Section 144 Cr.P.C. passed by the District Magistrate alleging that five boys were apprehended who were violating the said order under Section 144 Cr.P.C. and as such, complaint under Section 188 IPC was filed against the petitioner.

3. Learned counsel for the petitioner contended that the present

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FIR is not maintainable because in such like cases instituted on the basis of a complaint of the public service, report under Section 173 Cr.P.C. cannot be filed straightway, rather after enquiry by public servant, the complaint is to be filed by the said public servant.

4. Learned State counsel has opposed this petition and contended that the present FIR is not liable to be quashed.

5. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that similar matter was before Hon`ble Division Bench of this Court in **Jiwan Kumar Vs. State of Punjab and others, 2009(1)**

R.C.R. (Criminal) 415, wherein it was observed as under:-

“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, 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.

11. 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

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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.”

6. Quite identical are the facts of the case in hand and a such, the present FIR is also liable to be quashed.

7. Resultantly, the present petition stands allowed and FIR No. 201 dated 3.10.2015 under Section 188 IPC registered at Police Station Nagina, District Mewat (Annexure P/2) and all subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

(SHEKHER DHAWAN)
JUDGE

May 14, 2019

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes