

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.880 of 2020

The State of Chhattisgarh, Through District Magistrate, Raipur (C.G.)

---- Petitioner

Versus

1. Rikki Sahu, S/o Rajaram Sahu, Aged about 26 years, R/o Bramhmayi Para, Police Station Khamtarai, District Raipur (C.G.)
2. Sourabh Tiwari, S/o Satyanarayan Tiwari, Aged about 28 years, R/o New Changora Bhata, Police Station D.D. Nagar, Raipur (C.G.)
3. Tukaram Sahu, S/o Shriram Sahu, Aged about 44 years, R/o Sector-3, Police Station D.D. Nagar, District Raipur (C.G.)
4. Ajay Yadav, S/o R.K. Yadav, Aged about 36 years, R/o Pachpedi Naka, Police Station Tikrapara, District Raipur (C.G.)

---- Respondents

 For Petitioner/State: Mr. Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/07/2020

1. Proceedings of this matter have been taken-up for hearing on the question of admission through video conferencing.
2. Heard on I.A.No.1/2020, the application for condonation of delay in filing the application for leave to appeal.
3. Sufficient cause has been shown for delay in filing this petition.
 Accordingly, the application for condonation of delay is allowed and delay is condoned.
4. Also heard on admission.
5. Mr. Vikram Sharma, learned State counsel appearing for the petitioner,

would submit that the learned Judicial Magistrate First Class is absolutely unjustified in acquitting the respondents of the offence under Section 188 of the IPC on the ground that despite sufficient opportunity, no witnesses were examined to support the case of the prosecution as no reasonable opportunity was granted to adduce evidence.

6. I have considered the submissions put-forth on behalf of the State / petitioner and went through the record with utmost circumspection.
7. Charge-sheet was filed by the Station House Officer, Police Station Civil Lines, Raipur before the jurisdictional criminal court for commission of the alleged offence under Section 188 of the IPC against the respondents herein stating that on 4-5-2013 at 7.15 p.m., in the jurisdiction of Police Station Civil Lines, Near Khajana Tiraha Road, the respondents entered into the prohibited area without permission and thereby violated the promulgated order of the Government and thereby committed the offence. Section 188 of the IPC reads as follows: -

“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 persons 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 trends 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. At this stage, it would be appropriate to notice Section 195(1)(a)(i) of the Code of Criminal Procedure, 1973 which states 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) xxx xxx xxx

(iii) xxx xxx xxx

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”

9. The object of the above-stated provision is to protect persons from being needlessly harassed by vexatious prosecutions in retaliation. It is a check to protect innocent persons from criminal prosecution which may be activated by malice or ill will.

10. A careful perusal of Section 195(1) of the CrPC would show that the general rule is that any person having knowledge may set the law in motion by making a complaint, even though he is not the person interested in or assisted by the offence to the general rule (195) provides an exception and forbids cognizance having been taken of the offence referred to therein except on the complaint in writing by the court or by some other court to which such court is subordinate. (See Lalji Haridas v.

The State of Maharashtra and another¹.)

¹ AIR 1964 SC 1154

11. In the matter of Daulat Ram v. State of Punjab², the Supreme Court has held that there is an absolute bar against the court taking seisin of the case under Section 182 of the IPC except in the manner provided by Section 195 of the CrPC. It was further held that the complaint must be in writing by the public servant concerned and trial under Section 182 of the IPC without complaint in writing is therefore without jurisdiction ab initio.
12. Similarly, in the matter of Govind Mehta v. The State of Bihar³, their Lordships of the Supreme Court have held that Section 195 of the CrPC is in fact a limitation on the unfettered powers of a magistrate to take cognizance under Section 190, he must examine the facts of the complaint before him and determine whether his power of taking cognizance under Section 190 has or has not been taken away by any of the clauses (a) to (c) of Section 195(1). It was further held that if there is a non-compliance with the provisions of Section 195, the Magistrate will have no jurisdiction to take cognizance of any of the offences enumerated therein.
13. Similarly, in the matter of C. Muniappan and others v. State of Tamil Nadu⁴, their Lordships of the Supreme Court held that the provisions of Section 195 of the CrPC are mandatory and non-compliance of the same would vitiate the prosecution. It was observed as under: -

“33. Thus, in view of the above, the law can be summarised 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 CrPC 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

2 AIR 1962 SC 1206

3 AIR 1971 SC 1708

4 (2010) 9 SCC 567

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

14. The principle of law laid down in C. Muniappan (supra) has been followed with approval in the matter of Babita Lila and another v. Union of India⁵ in which it has been held as under: -

“46. That the provisions of Section 195 of the Code are mandatory so much so that non-compliance thereof would vitiate the prosecution and all consequential orders, has been ruled by this Court, amongst others in *C. Muniappan v. State of T.N.* (supra) wherein the following observations in *Sachida Nand Singh v. State of Bihar*⁶ were recorded with approval: (SCC pp. 497-98, para 7)

“7. ... Section 190 of the Code empowers “any Magistrate of the first class” to take cognizance of “any offence” upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the Magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise. ...

(emphasis supplied)”

15. Reverting to the facts of the case in the light of the principles of law laid down by their Lordships of the Supreme Court in the afore-cited judgments, it is quite vivid that the offence under Section 188 of the IPC can be taken cognizance of by the learned Magistrate under Section 190 of the CrPC except in accordance with Section 195(1)(a)(i) of the CrPC and unless complaint in writing is filed by the concerned public officer, on the basis of police report, offence under Section 188 of the IPC cannot be taken cognizance of by the jurisdictional Magistrate, as “complaint” is defined in Section 2(d) of the CrPC has to be filed by the concerned

⁵ (2016) 9 SCC 647

⁶ (1998) 2 SCC 493

public servant to the jurisdictional Magistrate for taking cognizance of the offence under Section 188 of the IPC. Consequently, trial of the respondents for the offence under Section 188 of the IPC on the basis of police report and charge-sheet filed subsequent thereto by the State police was absolutely without jurisdiction and without authority of law. As such, it is not a fit case for grant of leave to file appeal to be granted against the respondents, as their acquittal is absolutely justified though for the reasons mentioned herein-above. Accordingly, the application for grant of leave to appeal against acquittal is refused and the petition is dismissed *in limine*.

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Misc. Petition No.880 of 2020

The State of Chhattisgarh

Versus

Rikki Sahu and others

Head Note

Cognizance of the offence under Section 188 of the IPC cannot be taken on the basis of police report.

पुलिस रिपोर्ट के आधार पर भारतीय दण्ड संहिता की धारा 188 अंतर्गत किये गये अपराध का संज्ञान नहीं लिया जा सकता।