IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMMO No.: 338 of 2020

Date of Decision: 24.12.2020

Sh. Anirudh Walia and another ....Petitioners.

Vs.

State of Himachal Pradesh and another .....Respondents.

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?[1] *No.*

For the petitioners: M/s Suneet Goel & Vivek Negi, Advocates.

For the respondent: Mr. Sumesh Raj, Additional Advocate General, with Ms. Divya Sood, Deputy Advocate General, for respondent No. 1-State.
Through Video Conferencing

Ajay Mohan Goel, Judge *(Oral):*

By way of this petition, the petitioners have prayed for the following reliefs:

> *"It is, therefore, prayed that the present petition may kindly be allowed and this Hon'ble Court may be pleased to quash First Information Report No. 0040 dated 22.04.2020 under Sections 188 and 269 of the Indian Penal Code, 1860 and Section 51 of the Disaster Management Act, 2005 lodged by Police Station,*

1 *Whether the reporters of the local papers may be allowed to see the Judgment?*

Sunni on the complaint of Sh. Hari Kishan against the petitioners and subsequent proceedings consequent to the said F.I.R. against petitioner No. 1 pending before Principal Magistrate Juvenile Justice Board, Shimla in Case No. 41-2 of 2020, as well as those against petitioner No. 2 before learned Judicial Magistrate (Court No. 5), Shimla in Criminal Case No.142-2 of 2020, titled State Versus Anil Walia & others in the interest of justice. Any other or further orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case may also be passed in favour of the petitioners."

2. Brief facts necessary for the adjudication of the present petition are as under:

An FIR has been registered against the petitioners, i.e., FIR No. 0040, dated 22.04.2020 at Police Station, Sunni under Sections 188 and 269 of the Indian Penal Code read with Section 51 of the Disaster Management Act, 2005 for purported violation of the said statutory provisions. The case of the petitioners is that one Shri Ashwani Kumar happens to be an employee/Gardner of petitioner No. 2, who has been serving the petitioners for more than a decade. Said Ashwani Kumar belongs to Village Khatnol and was not keeping well health-wise. His family was also having financial as well as difficulties with regard to daily

need supplies on account of the lockdown in the wake of COVID-19 pandemic. In these circumstances, Ashwani Kumar contacted petitioner No. 2 and requested him for help. Petitioner No. 2 accordingly obtained a Curfew Permit (Annexure P-2) for the purpose of movement from *Purani Koti, Mashobra* to *Khatnol* and back on medical grounds. The validity of the Curfew Permit was for 22.04.2020. According to the petitioners, on the said date, they proceeded to *Khatnol* on the strength of the said Curfew Permit to provide financial help as well as food supplies to Shri Ashwani Kumar. Two family friends of petitioner No. 2, who happened to be staying with the petitioners at *Koti* due to lockdown insisted upon and accompanied petitioner No. 2, so that in case of any problem, they were in a position to help the petitioners. As *Khatnol* was a new station for the petitioners and they were not conversant with the exact location of the residence of Ashwani Kumar, they wrongly reached a point other than Village *Khatnol*. To make the matter worse, on account of poor road condition, the tyre of the vehicle of petitioner No. 2 got deflated and the spare tyre was also found to be deflated. In these circumstances, the petitioners left the vehicle at a nearby road/village and walked to the house of Ashwani Kumar in Village *Khatnol* after making inquiries in this regard. Necessary help was provided to the family of Shri Ashwani Kumar and a pump was also arranged by Ashwani Kumar from the Village itself to re-fill the spare tyre. As per the petitioners, as the Vehicle of petitioner

No. 2 was found parked in a Village, probably getting alarmed by it, a complaint was lodged with the Police Station by Pradhan, Gram Panchayat, Khatnol, which led to the registration of FIR against the petitioners.

3. The contention of the petitioners is that their act was *bonafide*, which is evident from the fact that they were having a Curfew Permit, duly issued by the competent authority on medical grounds and the lodging of FIR, which resulted on account of immediate action of the Pradhan, Gram Panchayat Khatnol, who contacted the Police, probably was without verifying the facts. It is in these circumstances that this petition stands filed praying for the reliefs already mentioned hereinabove.

4. I have heard learned counsel for the parties and also gone through the pleadings.

5. In my considered view, there is merit in the contention of the petitioners that their act was *bonafide*, which is borne out from the fact that there was a Curfew Permit in possession of the petitioners, on the basis of which, they had gone to *Khatnol*. During the course of arguments, it could not be pointed out by the State that the contention of the petitioners that they had actually gone to assist Shri Ashwani Kumar, who happened to be an employee of petitioner No. 2, was incorrect. On a pointed query of the Court, the State has informed that no other

subsequent allegation of breach of the provisions of the Disaster Management Act exist against the petitioners. In these circumstances, the Court is of the considered view that as the incident which has led to the lodging of the FIR was not a result of any *mens rea* on the part of petitioner No. 2, no fruitful purpose is going to be served by keeping the proceedings, which stand initiated against the petitioners, alive and it will be in the interest of justice in case this petition is allowed, as prayed for by quashing the FIR in issue as well as ensuing proceedings. Of course, had there been no Curfew Permit obtained by the petitioners, then things would have been different. However, that is not the case here. Petitioners were having a Curfew Permit issued in their favour for the date in issue by the competent authority. That being the case, it is difficult to believe the contents of the FIR, wherein it stands alleged that the petitioners when asked, were not in a position to produce any Curfew Permit. The Court finds no occasion for the petitioners to have had concealed a duly issued Curfew Permit when demanded by the Police official concerned, because said act of the petitioners would obviously have had worked to their disadvantage. Otherwise also, taking into consideration the entirety of the allegations alleged against the petitioners, this Court is of the view that it is in the larger interest of all that the proceedings are put to an end, more so, as petitioner No. 1 happens to be a minor.

6. Accordingly, this petition is allowed and FIR No. 0040 dated 22.04.2020, registered under Sections 188 and 269 of the Indian Penal Code, 1860 and Section 51 of the Disaster Management Act, 2005 at Police Station, Sunni and subsequent criminal proceedings pending against petitioner No. 1 before the Court of learned Principal Magistrate Juvenile Justice Board, Shimla in Case No. 41-2 of 2020 as well as those pending against petitioner No. 2 before the Court of learned Judicial Magistrate, Court No. 5, Shimla in Criminal Case No.142-2 of 2020, titled *State Versus Anil Walia & others* are ordered to be quashed and set aside. Petition stands disposed of in above terms, so also miscellaneous applications, if any.

(Ajay Mohan Goel)
Judge

December 24, 2020
(bhupender)