

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.79 of 2018**

Tulsidas Markam son of Shri Ramchandra Singh, aged about 30 years, posted as Tahsildar, Tahsil Office, Bhaiyathan, District-Surajpur (CG)

----- **Petitioner**

Versus

- 1.State of Chhattisgarh, through the Station House Officer, Police Station, Jhilmili (Bhaiyathan), District-Surajpur (CG)
- 2.The Superintendent of Police, District-Surajpur
- 3.Suresh Rai, posted as Incharge, Tahsildar, Odgi, District Surajpur (CG)

----- **Respondents**

For Petitioner: Mr.Goutam Khetrapal, Advocate

For Respondents No.1&2/State:

Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/02/2021

1. The petitioner herein seeks quashment of FIR registered in Crime No.33815017180003 at Police Station Jhilmili (Bhaiyathan), District-Surajpur at the instance of respondent No.3 for offences punishable under Sections 186, 188, 189, 193, 196 and 211 of the IPC on the ground that on account of service dispute between the petitioner and respondent No.3 qua the place of posting while working as Tahsildar, this *mala fide* FIR has been registered against him, which is also barred under Sections 195

(1)(a)(i) and 195(1)(b)(i) of the CrPC.

2. Mr. Goutam Khetrapal, learned counsel for the petitioner would submit that the petitioner while working as Tahsildar at Bhaiyathan, District Surajpur, the Collector, Surajpur by order dated 27.6.2017 transferred him at Premnagar and posted respondent No.3 in his place by that order, against which, the petitioner preferred writ petition being WPS No.2900 of 2017, in which this Court stayed the transfer order on 21.1.2017, whereas the FIR has been registered against him on 5.1.2018 and as such, FIR for aforesaid offences except following the procedure laid down in Section 195(1)(a)(i) and 195(1)(b)(i) of the CrPC could not have been registered against him. He would reply upon the decision of this Court in the matter of **Dr. Apurva Ghiya v. State of Chhattisgarh and others**¹⁻

3. On the other hand, Mr. Ravi Bhagat, learned Deputy Government Advocate, would support the impugned FIR.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

5. It appears that the petitioner was posted at Tahsildar at Bhaiyathan, Tahsil and District Surajpur and by

1 AIR OnLine 2020 Chh 1192

order dated 21.6.2017 (Annexure P-2) the Collector, Surajpur transferred him at Premnagar and respondent No.3, who was posted at Premnagar, has been posted in his place. The petitioner questioned the transfer order dated 21.6.2017 (Annexure P-2), in which this Court in WPS No.2900 of 2017 granted interim order on 21.7.2017 and by that order, he continued at Bhaiyathan, but taking exception to that continuance of the petitioner at Bhaiyathan as Tahsildar, FIR has been registered on 5.1.2018.

6. Section 195(1)(a)(i) of the CrPC provides 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),

(ii and (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"

Section 195(1)(a)(i) of the CrPC provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

Section 195(1)(b)(i) provides as under:-

"195(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court,

(ii) and (iii) xxx xxx xxx

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate."

Section 195(1)(b)(i) of the CrPC provides that no Court shall take cognizance of any offence punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 of the IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

7. In the matter of Dr. Apurva Ghiya (supra), this Court after noticing the judgments of the Supreme Court in the matters of Basir-ul-Huq and others v. The State of West Bengal on the complaint of Dhirendra Nath Bera², Daulat Ram v. State of Punjab³, Govind Mehta v. The State of Bihar⁴, C. Muniappan and others v. State of Tamil Nadu⁵, Babita Lila and another v. Union of

2AIR 1953 SC 293
3AIR 1962 SC 1206
4AIR 1971 SC 1708
5(2010) 9 SCC 567

India⁶, State of U.P. v. Mata Bhikh and others⁷,
Sachida Nand Singh v. State of Bihar⁸, M.S. Ahlawat v.
State of Haryana and another⁹, Jeewan Kumar Raut and
another v. Central Bureau of Investigation¹⁰, Saloni
Arora v. State of NCT of Delhi¹¹ and Union of India v.
Ashok Kumar Sharma and others¹² and also the decision
of the Madras High Court in Jeevanandham and others v.
State and another¹³, it has been held that no FIR can
be registered under Section 154 of the Code for
alleged commission of offence under Section 188 of the
IPC by observing as under:-

“30. From a conspectus of the aforesaid judgments rendered by their Lordships of the Supreme Court (supra) and the Madras High Court (supra), it is quite vivid that in order to prosecute an accused for the offence punishable under Section 188 of the IPC, it is imperative to undergo the procedure envisaged under Section 195(1)(a)(i) of the Code i.e. complaint in writing of public servant concerned or some other public servant to whom he is subordinate, otherwise cognizance of offence under Section 188 of the IPC cannot be taken and if this imperative procedure is not complied with, the entire prosecution for offence under Section 188 of the IPC would be rendered *void ab initio*, as Section 195 of the Code is an exception to the general rule contained in

6(2016) 9 SCC 647

7(1994) 4 SCC 95

8(1998) 2 SCC 493

9AIR 2000 SC 168

10(2009) 7 SCC 526

11AIR 2017 SC 391

12Criminal Appeal No.200 of 2020, decided on 28-8-2020

132019(1) MLJ (Cri) 36

Section 190 of the Code wherein any person can set the law in motion by making complaint. The provisions of Section 195 of the Code are mandatory and non-compliance with it will make the entire process *void ab initio* and without jurisdiction as well. As such, since cognizance of offence under Section 188 of the IPC can be taken on the basis of complaint in writing filed by the public servant concerned within the meaning of Section 2(d) of the Code, offence under Section 188 of the IPC being cognizable offence is not also saved by Explanation appended to Section 2(d) of the Code, as by Explanation to Section 2(d) of the Code, report made by police officer after investigation of non-cognizable offence is only to be treated as complaint and person making the complaint is to be treated as complainant and police report or FIR is not a complaint and further, charge-sheet is a report of police officer. Therefore, the first information report also cannot be registered under Section 154 of the Code for offence under Section 188 of the IPC, as registration of FIR after investigation would culminate into police report under Section 173(8) of the Code which cannot be taken cognizance of by the Magistrate under Section 190 of the Code, as such registration of FIR for offence under Section 188 IPC is barred."

8. In **Dr. Apurva Ghiya** (supra), this Court also repelled the submission of the State counsel that merely because the offence punishable under Section 188 of the IPC is cognizable offence, FIR ought to have been registered by the police, by holding as under: -

"31. At this stage, the submission of learned State counsel that since the offence punishable under Section 188 of the IPC is a cognizable

offence, therefore, police is duty bound to register FIR under Section 154 of the Code immediately on information as held by the Supreme Court in the matter of *Lalita Kumari v. Government of Uttar Pradesh and others*¹⁴ and to proceed to investigate as provided under Sections 156(3) & 157 of the Code, deserves to be noticed. Such a submission is not acceptable, because, merely because the offence under Section 188 of the IPC is cognizable offence, that by itself does not authorise the police officer to register FIR under Section 154 of the Code for such offence, the reason being that the registration of FIR would necessarily result in submission of police report under Section 173(8) of the Code which is specifically barred by Section 195(1)(a) read with Section 2(d) of the Code. The definition of "complaint" contained in Section 2(d) of the Code makes it clear that complaint does not include a police report. Their Lordships of the Supreme Court in *Ashok Kumar Sharma's* case (supra), in the light of Section 32 of the Drugs and Cosmetics Act, 1940, held that the principles laid down in *Lalita Kumari* (supra) could not be applicable to registration of FIR for offence under the Drugs and Cosmetics Act, 1940 and observed as under: -

"66. We would think that this Court was not, in the said case, considering a case under the Act or cases similar to those under the Act, and we would think that having regard to the discussion which we have made and on a conspectus of the provisions of the CrPC and Section 32 of the Act, the principle laid down in *Lalita Kumari* (supra) is not attracted when an information is made before a Police Officer making out the commission of an offence under Chapter IV of the Act mandating a registration of a FIR under Section 154 of the CrPC."

As such, the argument raised in this behalf by the

14(2014) 2 SCC 1

learned State Counsel deserves to be rejected following the principle of law laid down in this behalf by their Lordships of the Supreme Court in *Ashok Kumar Sharma's* case (supra)."

9. Similarly, the offence under Sections 193, 196 and 211 of the IPC are also barred by the provisions contained in Section 195(1)(b)(i) of the CrPC as complaint in writing has to be filed by that Court or by such officer of the Court as that Court may authorise in writing in this behalf or of some other Court to which that Court is subordinate.

10. Similarly, offence under Section 189 of the IPC is non-cognizable offence and without the order of the Judicial Magistrate by virtue of Section 155(2) of the CrPC, no police officer shall investigate a non-cognizable case. Even otherwise, the dispute is service dispute between the petitioner and respondent No.3 and furthermore, the order of the Collector, Surajpur transferring the petitioner from Bhaiyathan was already stayed by this Court on 21.7.2017 in WPS No.2900 of 2017, therefore, FIR could not have been registered against the petitioner for the aforesaid offences.

11. Consequently, FIR registered against the petitioner in Crime NO.33815017180003 at Police Station Jhilmili (Bhaiyathan) for offences punishable

under Sections 186, 188, 189, 193, 196 and 211 of the
IPC is hereby quashed.

12. The writ petition is allowed to the extent
indicated hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-