

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on:09/12/2020****Order delivered on:04/01/2021****Cr.M.P.No.876 of 2020**

Rajesh Rathore S/o Late Bhagwat Prasad Rathore, aged about 42 years, R/o Village-Indira Nagar, New Bus Stand, Nagar Panchayat Pali, Thana – Pali, Distt. Korba (CG)

----- Petitioner**Versus**

State of Chhattisgarh, through Station House Officer, Pali, Police Station – Pali, Distt. Korba (CG)

----- Respondent

For Petitioner : Mr.Awadh Tripathi, Advocate
 For Respondent/State : Dr.Veena Nair, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1.The petitioner herein seeks quashment of FIR registered against him in Crime No.138/2020 at Police Station-Pali, Distt.Korba for offences punishable under Sections 186, 188, 269 and 270 of the IPC read with Section 3 of the Epidemic Diseases Act, 1897 (hereinafter called as 'the Act of 1897') on the following factual backdrop:-

(2.1) That, two complainants namely, (1) Mr.Gajendra Kumar Pandey and (2) Mr.Surendra Dubey filed written complaint to Police Station-Pali stating inter-alia that on 12.6.2020 at 4.20 p.m. when the Judicial Magistrate, Pali was on remand duty, the petitioner

without wearing a mask entered in the Court room and spoke in high pitch with the Presiding Officer and that is usual practice by the petitioner herein and that violates the guidelines issued by the Central Government and the State Government for preventing the corona virus/COVID-19 disease though he was warned of his objectionable behaviour, but did not rectify his behaviour and thereby contributing to spread of corona virus, as such, appropriate action be taken against the petitioner and consequently, the said police station has registered the aforesaid offences against the petitioner, which is sought to be quashed in this petition under Section 482 of the CrPC principally on the ground that the petitioner at that very time was not tested as corona positive and taking the contents of the FIR as it is, no offences under Sections 186, 188, 269 and 270 of the IPC and Section 3 of the Act of 1897 are made out and no FIR can be registered for the aforesaid offences, as such, the FIR deserves to be quashed.

(2.2) Return has been filed by the respondent/State stating inter-alia that act of the petitioner while entering in the Court room without wearing a mask violated the imperative guidelines issued by the

Central Government as well as the State Government for preventing corona virus/COVID-19 and the police is authorized to investigate the cognizable offences, as such, the petition deserves to be dismissed. No rejoinder has been filed on behalf of the petitioner.

2. Mr. Awadh Tripathi, learned counsel for the petitioner, would submit that taking the contents of the FIR as it is, no offences under Sections 269 and 270 of the IPC are made out as neither on the date of registration of the FIR nor subsequently thereafter the petitioner has been tested positive for corona virus/COVID-19. Similarly, offences under Sections 186 and 188 of the IPC cannot be taken cognizance of on the basis of FIR lodged by the complainants, who are peons of the Court concerned. It should have been made by public servant concerned or by the officer to whom such public servant is administratively subordinate. He would further submit that there is no provision for delegation of power of filing complaint and even for offence under Section 3 of the Act of 1897, no FIR can be registered under Section 154 of the CrPC. He would also submit that no material is available on record as in that case, complaint has to be filed by the officer promulgating the regulation / order in the jurisdictional criminal Court and as such, the

impugned FIR deserves to be quashed being expressly barred by law.

3. Dr. Veena Nair, learned Deputy Advocate General for the respondent/State, would submit that on account of the petitioner's irresponsible behaviour in entering in the Court room without wearing a mask violating the Corona guidelines issued by the Central Government and the State Government and interfering with the official and governmental work, offences under Sections 186, 188, 269 and 270 of the IPC read with Section 3 of the Act of 1897 have rightly been registered, which is being investigated by the police. The aforesaid offences being cognizable offences, the jurisdictional police is competent to investigate and as such, the petition under Section 482 of the CrPC deserves to be dismissed.

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

5. Section 269 of the IPC states as under:-

"269. Negligent act likely to spread infection of disease dangerous to life.-
Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to

six months, or with fine, or with both."

6. A careful perusal of the aforesaid provision would show that for punishment of the aforesaid offence it must be shown that (1) the disease in question was infectious and dangerous to life, (2) the accused did an act which is likely to facilitate spreading of disease, (3) the accused did an act negligently and unlawfully and (4) he knew or had reason to believe that his act was likely to spread the disease.

7. Section 270 of the IPC states as under:-

"270. Malignant act likely to spread infection of disease dangerous to life.- Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

For punishment of offence under Section 270 of the IPC, it must be shown that the disease in question was infectious and dangerous to life, the accused acted negligently and unlawfully and the accused knew or had reason to believe that his act was likely to spread the infection.

8. The Madras High Court in the matter of Kandasami Mudaliar, In re¹ held that when the accused was directed by the Health Officer of the City of Madras

¹ AIR 1920 Madras 420

to remove sick child to the Isolation Centre, but accused removed him to an isolated room, has been held that he has not done any act negligently to spread dangerous disease.

9. However, West J. in his concurring opinion in **Kandasami Mudaliar** (supra) held as under:-

“Assuming that there was dangerous disease and culpable negligence, still accused's act of sexual intercourse would not spread infection without the intervention of the complainant party, himself a responsible person and himself generally an accomplice.”

10. In the matter of **Queen-Empress v. Ramka Kom Sadhu**² it has been held by the Division Bench of the Bombay High Court that a prostitute, who while suffering from syphilis disease communicated the disease to a person who has sexual intercourse with her, is not liable to punishment under Section 269 of the IPC for negligent act and one likely to spread infection of any disease dangerous to life.

11. In a recent decision, the High court of Bombay (Nagpur Bench) in the matter of **HLA SHWE and others v. State of Maharashtra** (Criminal Application (APL) No.453 of 2020, decided on 21.9.2020 has held that when the petitioners were tested negative for infection of COVID-19 and they were kept in isolation

2 ILR (1887) 2 Bombay 59

centre, it cannot be held that they have committed offences under Sections 269 and 270 of the IPC. It was held as under:-

"14. To attract ingredients of Section 269 and 270, the person must commit any act which he knows is likely to spread infection of any disease which is dangerous to life. It is not in dispute that the applicants had undergone COVID-19 test during their period of quarantine i.e. from 03.04.2020 and their test report for infection of COVID-19 was negative. It is also not disputed that they were kept in quarantine from 24.03.2020 till 31.03.2020 under the supervision of Dr.Khawaj, NMC Zonal Officer, Mominpura, Nagpur. There is no material on record to prove that applicants had indulged in any act which was likely to spread infection of COVID-19. Therefore, from the material produced in the charge-sheet, there is no evidence to substantiate the fulfillment of ingredients of Section 269 and 270 of the Indian Penal Code."

12. Reverting to the facts of the present case in the light of principle of law laid down in the aforesaid judgments (supra), it is quite vivid that the petitioner was not tested positive for COVID-19 either on the date of registration of the FIR or immediately prior to that or immediately thereafter and only allegation is that he entered in the Court room of Judicial Magistrate for few days without properly wearing a mask and that he spoke with high pitch with the learned Judicial Magistrate. There is no allegation in the FIR or anywhere in the counter-affidavit filed by the petitioner that he was

suffering from COVID-19 or at any point of time he was found corona positive/COVID-19, which is admittedly the disease dangerous to life and further there is no allegation that he has done unlawful or negligent act falling within the ambit of Sections 269 and 270 of the IPC, as such, it cannot be held that he has done an act unlawfully and negligently knowing well that his act would likely to spread infection of any disease dangerous to life, as such, the ingredients of offences under Sections 269 and 270 of the IPC are absolutely lacking and as such, the petitioner cannot be prosecuted for offences under Sections 269 and 270 of the IPC and taking the contents of the FIR as it is, no offences under Sections 269 and 270 of the IPC are made out against him.

13. The offence under Section 3 of the Act of 1897 is punishable under Section 188 of the IPC. Section 188 of the IPC provides as under:-

"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 person 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.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section."

14. The prosecution has to prove the following ingredients for commission of offence under Section 188 of the IPC:—

- (i) That there must be an order promulgated under by the public servant concerned;
- (ii) That such public servant must be lawfully empowered to promulgate such order;
- (iii) That the person with knowledge of such order and being directed by such order to abstain from doing certain Act or to take certain order with certain property in his possession and under his management, has disobeyed; and
- (iv) That such disobedience causes or tends to cause:

- (a) Obstruction, annoyance or risk of it to any person lawfully empowered; or
- (b) Danger to human life, health and safety; or
- (c) A riot or affray.

15. The question that would emanate for consideration is, whether FIR can be registered under Section 154 of the CrPC for offence under Section 188 of the IPC and whether such an offence can be investigated by the police in view of the provision contained in Section 195(1)(a)(i) of the CrPC?

16. In order to decide the dispute, it would be appropriate to notice the definition of "cognizable offence" contained in Section 2(c) of the CrPC which states as under: -

"(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;"

Section 2(d) of the CrPC defines "complaint". It states as under: -

"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—A report made by a police officer

in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

Section 2(h) of the CrPC defines "investigation" which is as follows: -

"(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;"

"Police report" is defined in Section 2(r) of the CrPC which is as under:-

"(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;"

17. Chapter XII of the CrPC states about information to the police and their powers to investigate. Section 154 of the CrPC speaks about information in cognizable cases. Sub-section (1) of Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered

in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 155 deals with information as to non-cognizable cases and investigation of such cases. Section 156 enumerates police officer's power to investigate cognizable case. Section 173 provides for report of police officer given on completion of investigation. Section 190 provides for cognizance of offences by Magistrates. Section 195 prohibits the Court from taking cognizance of the offences mentioned therein except on the complaint in writing by the persons named therein.

18. At this stage, it would be appropriate to notice Section 195(1)(a)(i) of the CrPC 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;"

19. 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.

20. The Supreme Court in the matter of **Ushaben v. Kishorbhai Chunilal Talpada and others**³ referring to the Explanation appended to Section 2(d) of the CrPC, clearly held that a report made by a police officer after investigation of a non-cognizable offence is to be treated as a complaint and the officer by whom such a report is made is to be deemed to be the complainant.

21. In the matter of **Chittaranjan Das v. State of West Bengal and others**⁴, the Calcutta High Court has held that the words "it does not include a police report" in Section 2(d) of the CrPC refers to report under Section 173 of the CrPC after completion of investigation, not any other report by police officer.

22. Similarly, the Karnataka High Court in the matter of **Chandrasha and others v. The State**⁵ has also held that charge-sheet on a cognizable offence is not

3(2012) 6 SCC 353

4AIR 1963 Cal 191

51989 Cri. L.J. NOC 97 (Kant.)

complaint, it is police report.

23. In the matter of Dr. Apurva Ghiya v. State of Chhattisgarh and others⁶, 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 Bera⁷, Daulat Ram v. State of Punjab⁸, Govind Mehta v. The State of Bihar⁹, C. Muniappan and others v. State of Tamil Nadu¹⁰, Babita Lila and another v. Union of India¹¹, State of U.P. v. Mata Bhikh and others¹², Sachida Nand Singh v. State of Bihar¹³, M.S. Ahlawat v. State of Haryana and another¹⁴, Jeewan Kumar Raut and another v. Central Bureau of Investigation¹⁵, Saloni Arora v. State of NCT of Delhi¹⁶ and Union of India v. Ashok Kumar Sharma and others¹⁷ and also the decision of the Madras High Court in Jeevanandham and others v. State and another¹⁸, 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

6 AIR OnLine 2020 Chh 1192

7AIR 1953 SC 293

8AIR 1962 SC 1206

9AIR 1971 SC 1708

10(2010) 9 SCC 567

11(2016) 9 SCC 647

12(1994) 4 SCC 95

13(1998) 2 SCC 493

14AIR 2000 SC 168

15(2009) 7 SCC 526

16AIR 2017 SC 391

17Criminal Appeal No.200 of 2020, decided on 28-8-2020

182019(1) MLJ (Cri) 36

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 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."

24. 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*¹⁹ 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 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)."

25. Thus, in view of the aforesaid legal analysis, it is quite vivid that the respondents/State is absolutely unjustified in registering the first information report for the offence punishable under Section 188 of the IPC. As such, registration of FIR against the petitioner for the offence punishable under Section 188 of the IPC deserves to be quashed.

26. The petitioner has also been charged under Section 186 of the IPC, which states as under:-

"186. Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

A focused perusal of the above-stated provision would show that in order to constitute an offence under Section 186 of the IPC, the obstruction must be intentional and direct. It must be proved that public servant was obstructed in discharge of his public function. There must be actual obstruction and not a mere withholding of assistance or enticing to others to withhold assistance. The word "voluntarily" contemplates the commission of some overtact of obstruction.

27. In Santosh Kumar Jain v. The State²⁰ it was held by the Supreme Court that there was a valid order of seizure by the competent authority and it would amount to obstruction under Section 186 of the IPC, if goods were not allowed to be recovered.

28. In the matter of Collector of Customs & Central Excise, Bhubneshwar, District Puri v. Paradip Port Trust and another²¹ following the judgment of the Supreme Court in the matters of Santosh Kumar Jain

²⁰ AIR 1951 SC 201

²¹ (1990) 4 SCC 250

(supra) and Hinchliffe v. Sheldon²² their Lordships of the Supreme Court have held that 'obstruction' is not confined to physical obstruction. It includes anything which makes it more difficult for the police or public servant to carry out their duties.

29. Reverting to the facts of the present case, in light of the above-stated legal position, it is quite vivid that there is no allegation that the petitioner voluntarily obstructed the public servant (concerned Magistrate) in discharge of his public functions except that the petitioner allegedly spoke in high pitch with the Presiding Officer of the Court and thereby interfered with the government functions. Taking the contents of FIR as it, it cannot be held that offence under Section 186 of the IPC is made-out against the petitioner.

30. Consequently, the FIR registered at the instance of complainants-Mr.Gajendra Kumar Pandey and Mr.Surendra Dubey is liable to be quashed and as such, FIR in Crime No.138/2020 at Police Station Pali, District Korba for offences under Sections 186, 188, 269 and 270 of the IPC and Section 3 of the Act of 1897 is hereby quashed.

31. The petition under Section 482 of the CrPC is

22 (1955) 1 WLR 1207

allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

