

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on:29/01/2021****Order delivered on:03/02/2021****Cr.M.P.No.1135 of 2020**

Chetan Tamrakar, S/o Shri Santosh Kumar Tamrakar,
aged about 24 years, R/o Juna Bilaspur, City Kotwali,
Bilaspur, Chhattisgarh

----- Petitioner**Versus**

- 1.State of Chhattisgarh, through the Secretary, Home Department, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District-Raipur, Chhattisgarh
- 2.Station House Officer, Police Station, Koni, District-Bilaspur (CG)
- 3.Dr.Sourabh Sharma, Doctor, CHC, Bilha, presently working as Incharge, Covid Isolation Center, Chitrokot Hostel, Pandit Sunderlal Sharma University, Bilaspur (CG)

----- Respondents

For Petitioner:	Mr.Harshmander Rastogi, Advocate
For Respondents No.1&2/State:	Mr.Ravi Bhagat, Dy.G.A.
For Respondent No.3:	Mr.Vivek Kumar Agrawal, Advocate

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

- 1.The petitioner herein seeks quashment of FIR registered in Crime No.182/2020 at Police Station-Koni, Distt.Bilaspur offence punishable under Section 3 of the Epidemic Diseases Act, 1897 (hereinafter called as 'the Act of 1897') punishable under Section 188 of the IPC on the following factual backdrop:-

(2.1) That, on 17.8.2020 the petitioner was on his way to Bhopal for second part of the selection

process conducted by Indian Army Services, in the meanwhile, he was reported corona positive and thereby he returned from Durg to Bilaspur and he was admitted to Isolation Center at Chitrakot Hostel of Pandit Sunderlal Sharma University, Bilaspur (hereinafter called as "Isolation Center") on 18.8.2020. It is the case of the petitioner that though he was completely asymptomatic, he was admitted to the Isolation Center which was in the poorest condition with no bed-sheets on beds, dirty toilets, unhygienic food and environment, no nets on the windows to prevent insects and mosquitoes and even without power backup and despite having been requested to the authorities to discharge him or to get it admitted in the better isolation center, the authorities did not give any attention and ultimately, he was shifted to separate room on 19.8.2020. It is further case of the petitioner that he was mistreated by the staff of the hospital and denied food & medication timely and in a state of helplessness, the petitioner hit his hand on partition glass of Isolation Center and injured himself and consequently, respondent NO.3 herein, who is incharge of COVID Isolation Center, lodged FIR for offence under Section 3 of the Act of 1897 which

is punishable under Section 188 of the IPC stating inter-alia that he has misbehaveed with hospital authorities and broken partition glass and got himself injured and he has been referred to District Hospital, Bilaspur for further treatment, as such, he has committed an offence punishable under Section 3 of the Act of 1897, upon which, first information report has been registered, which has been sought to be challenged by way of this petition under Section 482 of the CrPC.

2. Respondents No.1 and 2 have filed the return stating inter-alia that the petitioner was treated properly and accepting his request, he was given separate room on 20.8.2020 and at the time of breakfast/medicine distribution, he has broken partition glass of the said COVID-19 Isolation Center and caused damage to the Government property worth ₹ 2000/-. It has also been submitted that Section 195(1)(a)(i) of the CrPC bars taking cognizance for the offence, but does not bar the investigation of the cognizable offence, which the police authorities are empowered to investigate, as such, the petition under Section 482 of the CrPC deserves to be dismissed.

3. No return has been filed on behalf of respondent No.3.

4. Mr.Harshmander Rastogi, learned counsel for the

petitioner, would submit that since the offence punishable under Section 3 of the Act of 1897 is deemed offence under Section 188 of the IPC, the procedural requirement for initiation of such offence under Section 195(1)(a)(i) of the CrPC has not been complied with in the instant case and for offence under Section 188 of the IPC, complaint in writing has to be filed by public servant concerned or by some other public servant to whom he is administratively subordinate, as such, respondent No.3 was even not competent to lodge the complaint. He would rely upon the judgment of the Supreme Court in the matter of **State of U.P. v. Mata Bhikh and others**¹ and the judgment of this Court in the matter of **Dr. Apurva Ghiya v. State of Chhattisgarh and others**² and submit that in the light of sub-para (6) of para-102 of judgment of the Supreme Court in the matter of **State of Harayana and others v. Bhajan Lal and others**³, FIR No.182/2020 registered at Police Station-Koni, Distt. Bilaspur for offence under Section 3 of the Act of 1897 punishable under Section 188 of the IPC deserves to be quashed. He would further submit that the provision contained in Section 195(1)(a)(i) of the

1 (1994) 4 SCC 95

2 AIR OnLine 2020 Chh 1192

3 1992 Supp (1) SCC 335

CrPC is mandatory in nature and therefore, cognizance for offence under Section 188 of the IPC cannot be taken on the basis of police report and can be taken on the complaint in writing as defined under Section 2(d) of the CrPC and first information report for offence under Section 3 of the Act of 1897 read with Section 188 of the IPC cannot be registered against the petitioner under the provisions contained in Section 154 of the CrPC and investigation cannot be done by the Station House Officer.

5. On the other hand, Mr. Ravi Bhagat, learned Deputy Government Advocate for respondents No.1 and 2/State, would submit that the impugned FIR has been registered for offence under Section 3 of the Act of 1897 punishable under Section 188 of the IPC and bar under Section 195(1)(a)(i) of the CrPC would apply at the time of taking cognizance, as such, lodging the FIR and investigating the matter for cognizable offence is not barred by virtue of the principle of law laid down by the Supreme Court in the matter of Lalita Kumari v. Government of U.P.⁴, as such, the writ petition deserves to be dismissed.

6. Mr. Vivek Kumar Agrawal, learned counsel for respondent No.3, would support the stand of learned State

⁴ (2014) 2 SCC 1

Counsel.

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

8. The Epidemic Diseases Act, 1897 has been enacted to provide for the better prevention of the spread of dangerous epidemic disease. Section 3 of the Act of 1897 states as under:-

"3. Penalty.-Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860)."

9. A careful perusal of the aforesaid provision would show that any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under Section 188 of the IPC, which is a cognizable offence.

10. The Act of 1897 suffered amendment by Epidemic Diseases (Amendment) Act, 2020 w.e.f. 28th September, 2020. Sub-section (2) and sub-section (3) of Section 3 have also been inserted by the Act of 2020. Section 3A has also been inserted stating that offence under sub-section (2) or sub-section (3) of Section 3 of the Act of 1897 shall be cognizable and non-bailable. It has further been amended that any case registered under

sub-section (2) or sub-section (3) of Section 3 shall be investigated by a police officer not below of police inspector. It has further been amended that investigation of a case under sub-section (2) or sub-section (3) of Section 3 of the Act of 1897 shall be completed within a period of thirty days from the date of registration of the FIR.

11. Section 3A of the Act of 1897 as amended provides as under:-

"3A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

(i) an offence punishable under sub-section (2) or sub-section (3) of section 3 shall be cognizable and non-bailable;

(ii) any case registered under sub-section (2) or sub-section (3) of section 3 shall be investigated by a police officer not below the rank of Inspector;

(iii) investigation of a case under sub-section (2) or sub-section (3) of section 3 shall be completed within a period of thirty days from the date of registration of the First Information Report;

(iv) in every inquiry or trial of a case under sub-section (2) or sub-section (3) of section 3, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded, and an endeavour shall be made to ensure that the inquiry or trial is concluded within a period of one year:

Provided that where the trial is not concluded within the said period, the Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing, but not exceeding six months at a time."

12. 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."

13. 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.

14. 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?

15. 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;”

16. 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.

17. 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;"

18. 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. This provision enacts exception to general rule that any person having knowledge of an offence may set the law in motion by making a complaint, even though he is not the person interested therein and forbids cognizance of offences mentioned therein except on complaint in

writing by the person named in the above-stated provision.

19. The Supreme Court in the matter of Ushaben v. Kishorbhai Chunilal Talpada and others⁵ 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.
20. In the matter of Chittaranjan Das v. State of West Bengal and others⁶, 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.
21. Similarly, the Karnataka High Court in the matter of Chandrasha and others v. The State⁷ has also held that charge-sheet on a cognizable offence is not complaint, it is police report.
22. 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.

5(2012) 6 SCC 353

6AIR 1963 Cal 191

71989 Cri. L.J. NOC 97 (Kant.)

The State of West Bengal on the complaint of Dhirendra Nath Bera⁸, Daulat Ram v. State of Punjab⁹, Govind Mehta v. The State of Bihar¹⁰, C. Muniappan and others v. State of Tamil Nadu¹¹, Babita Lila and another v. Union of India¹², State of U.P. v. Mata Bhikh and others¹³, Sachida Nand Singh v. State of Bihar¹⁴, M.S. Ahlawat v. State of Haryana and another¹⁵, Jeewan Kumar Raut and another v. Central Bureau of Investigation¹⁶, Saloni Arora v. State of NCT of Delhi¹⁷ and Union of India v. Ashok Kumar Sharma and others¹⁸ and also the decision of the Madras High Court in Jeevanandham and others v. State and another¹⁹, 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

8AIR 1953 SC 293

9AIR 1962 SC 1206

10AIR 1971 SC 1708

11(2010) 9 SCC 567

12(2016) 9 SCC 647

13(1994) 4 SCC 95

14(1998) 2 SCC 493

15AIR 2000 SC 168

16(2009) 7 SCC 526

17AIR 2017 SC 391

18Criminal Appeal No.200 of 2020, decided on 28-8-2020

192019(1) MLJ (Cri) 36

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."

23. 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*²⁰ 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)."

24. Thus, in view of the aforesaid legal analysis, it is quite vivid that the respondent/State is absolutely unjustified in registering the first information report for the offence punishable under Section 3(1) of the Act of 1897. As such, registration of FIR against the petitioner for offence under Section 3 of the Act of 1897 punishable under Section 188 of the IPC deserves to be quashed.

25. There are two more additional reasons for holding so. The first one is as noticed hereinabove that offence under Section 3 (1) of the Act of 1897 is punishable under Section 188 of the IPC. It has also been noticed hereinabove that by the Epidemic Diseases (Amendment) Act, 2020, Section 3(2) and 3(3) has been

amended for commission of offence against a healthcare service personnel whoever commits or causes damage to the property and that offences by virtue of Section 3A of the Act of 1897 have been made cognizable and non-bailable and police officer not below the rank of inspector has been authorized to investigate the said offences and even the period of completion from the date of registration of the FIR has been provided, but in Section 3(1) as it originally provided, no amendment has been incorporated, which goes to show that only Section 3(2) and 3(3) of the Act of 1897 has been inserted and those offences are allowed to be investigated by the police officer not below the rank of inspector, otherwise, the legislature could have very well amended Section 3(1) also empowering the police officer to investigate the offence under Section 3(1) of the Act of 1897, which is clear indication of legislative intent that offence under Section 3(1) as originally provided in the Act of 1897, no FIR can be registered for offence under Section 3(1) of the Act of 1897 and it cannot be investigated by the police officer upon registration of FIR under Section 154 of the IPC. As such, this Court is clearly of the opinion that for offence under Section 3(1) of the Act of 1897 which is punishable

under Section 188 of the IPC, no FIR can be registered under Section 154 of the CrPC in the light of legal analysis and discussion made hereinabove.

26. The Supreme Court in the matter of Bhajan Lal (supra) has laid down listed categories by way of illustration wherein inherent powers under Section 482 can be exercised. Sub-para 6 of para-102 of the said judgment states as under:-

“(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.”

27. As a fallout and consequence of the aforesaid discussion, it is held that for offence under Section 3(1) of the Act of 1897 punishable under Section 188 of the IPC, no FIR can be registered under Section 154 of the CrPC. Accordingly, FIR No.182/2020 registered at Police Station-Koni, Distt. Bilaspur for offence under Section 3 of the Act of 1897 is hereby quashed.

28. The petition under Section 482 of the CrPC is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-