

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPCR No. 639 of 2020**

1. Rupesh Yadav S/o Shri Nankiram Yadav, Aged about 33 years, R/o Rahaud, Distt. Janjgir-Champa, Chhattisgarh.
2. Manoj Patel S/o Shri Lt. Budhram Patel, Aged about 40 years, R/o Rahaud, Distt. Janjgir-Champa, Chhattisgarh.
3. Sumit Kumar Kashyap S/o Shri Garhan Kashyap, Aged about 33 years, R/o Rahaud, Distt. Janjgir-Champa, Chhattisgarh.
4. Manoj Dewangan S/o Shri Achchheram Dewangan, Aged about 46 years, R/o Rahaud, Distt. Janjgir-Champa, Chhattisgarh.
5. Ramdular Yadav S/o Shri Jagnathiya Yadav, Aged about 42 years, R/o Rahaud, Distt. Janjgir-Champa, Chhattisgarh.
6. Rajesh Kumar Soni, S/o Shri Revti Lal Soni, Aged about 38 years, R/o Rahaud, P.s. Distt. Janjgir Champa, Chhattisgarh.
7. Daya Shankar Gond, s/o Shri Mohan Gond, Aged about 33 years, R/o Rahaud, Distt. Janjgir-Champa, Chhattisgarh.
8. Rajendra Kumar Gupta S/o Shri Lt. Geeta Prasad Gupta, Aged about 43 years, R/o Rahaud, Distt. Janjgir-Champa, Chhattisgarh.
9. Dharam Pal S/o Shri Rajaram Aged about 40 years, R/o Rahaud, Distt. Janjgir-Champa, Chhattisgarh.

---Petitioners

Versus

- 1.State of Chhattisgarh, through Station House Officer, P.S. Sheorinarayan, Distt. Janjgir-Champa, Chhattisgarh.
- 2.Superintendent of Police, Janjgir, Distt. Janjgir-Champa, Chhattisgarh.
- 3.Nayab Tahsildar, Tahsil Pamgarh, Distt. Janjgir-Champa, Chhattisgarh.

--- Respondents

For Petitioners	:- Mr. Anish Tiwari, Advocate
For State	:- Mr. Ravi Bhagat, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****25/02/2021**

- 1.The nine petitioners herein seek quashment of FIR No. 95/2020 registered against them at Police Station Sheorinarayan, Janjgir-Champa for offence punishable under Section 188 of IPC.
- 2.Mr. Anish Tiwari, learned counsel for the petitioners, would submit that petitioners were assembled in the office of Nagar Panchayat, Rahaud as volunteers for combating the situation of COVID-19 due to which offence under Section 188 of CPC has unnecessarily been registered against them on the pretext that they were assembled there to celebrate the birthday of petitioner No. 4. He would further submit that

offence under Section 188 of IPC cannot be taken cognizance of and he would rely upon the decision of this Court in Dr. Apurva Ghiya v. State of Chhattisgarh & Ors.¹ and the decision of Bombay High Court in Hla Shwe v. State of Maharashtra² and Punjab and Haryana High Court in Sandeep Gandotra v. U.T. Chandigarh³.

3. Mr. Ravi Bhagat, learned State counsel, would oppose and submit that FIR has rightly been rejected as offence under Section 188 of IPC is cognizable offence.

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

5. This Court in Dr. Apurva Ghiya (supra) has clearly held that no FIR under Section 154 of CrPC can be registered for offence under Section 188 of the IPC. Paragraph 30 of the judgment states 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)

¹ ILR 2021 Chhattisgarh 21

² AIR Online 2020 Bom 1356

³ MANU/PH/3024/2019

(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."

Thereafter, finally in paragraph 34 the FIR for offence under Section 188 of IPC was quashed by stating as under :-

"34. Resultantly, it is held that for the offence punishable under Section 188 of the IPC, no FIR can be registered under Section 154 of the Code in the light of the legal analysis and discussion made herein-above. Accordingly, FIR No.112/2020 dated 18-6-2020 registered against the petitioner by Police Station: Ambagarh Chowki, Distt. Rajnandgaon for the offence punishable under Section 188 of the IPC is hereby quashed following the decision of the Supreme Court in Bhajan Lal's case (supra)."

6.The instant case is squarely covered by the decision of this Court in Dr. Apurva Ghiya (supra) and similar proposition has also been held by the Bombay High Court in Hla Shwe (supra) as well as by the Punjab and Haryana High Court in Sandeep Gandotra (supra). In that view of the matter, the FIR No. 95/2020 registered against the present petitioners at Police Station Sheorinarayan, Janjgir-Champa for offence punishable under Section 188 of IPC is hereby quashed.

7.This writ petition stands allowed accordingly.

No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet