

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.1157 OF 2021

Mr. Pankaj s/o Dhyaneswar Nighot,
Age 37 years, Occ- Private,
R/o Plot No.24, Mahalaxmi, Karim Layout,
Second Bus-stop, Gopalnagar,
Nagpur.

.....APPLICANT

...V E R S U S...

State of Maharashtra,
Through Police Station Officer,
Police Station, Sadar,
District Nagpur.

....NON-APPLICANT

Shri R.R.Vyas, Advocate for applicant.

Shri S.S. Doifode, Additional Public Prosecutor for non-applicant/State.

CORAM:- M.S. SONAK AND PUSHPA V. GANEDIWALA, JJ.

DATE :- 14th DECEMBER, 2021

ORAL JUDGMENT (PER : M.S. SONAK, J.)

Heard. Shri R.R. Vyas, who appears with Shri Vishwarupe, learned counsel for the applicant, and Shri S.S. Doifode, learned Additional Public Prosecutor for non-applicant/State.

2. **Rule.** The Rule is returnable forthwith at the request of and with the consent of the learned counsel for the parties.

3. Even otherwise, by way of order dated 25.10.2021 we had made it clear that this matter would be disposed of finally at the stage of admission.

4. The applicant seeks the following substantive reliefs in this application:

“(i) Call for the record of FIR No.4190/2016 dated 09/11/2016, registered with non-applicant, Sadar Police Station, Dist. Nagpur, and Charge-sheet No.79/2017 filed before learned Judicial Magistrate First Class, Court No.6, Nagpur on 16/08/2017 (Annexure No.I) for commission of offences punishable under Section 188 of the Indian Penal Code and 135 of Maharashtra Police Act.

(ii) Upon perusal of same, quash and set aside, FIR No.4190/2016 dated 09/11/2016, registered with Non Applicant, Sadar Police Station, Dist. Nagpur, and Charge-sheet No.79/2017 filed before learned Judicial Magistrate First Class, Court No.6, Nagpur on 16/08/2017 (Annexure-I) for commission of offences punishable under Section 188 of the Indian Penal Code and 135 of Maharashtra Police Act, so far as applicant is concern, on such terms and conditions, in the interest of justice.”

5. The record indicates that on 08.11.2016, one Vikas Thakare, purporting to represent Nagpur City (District) Congress Committee, applied to Senior Police Inspector, Sadar Police

Station, Nagpur for permission to hold demonstrations on 09.11.2016 at the Civil Lines, Nagpur.

6. By response dated 08.11.2016 itself, the Senior Police Inspector declined such permission. The allegation is that despite the permission being declined, the applicant and 40 to 50 others participated in the demonstrations which took place at Civil Lines on 09.11.2016. Based upon this, an FIR came to be registered against the applicant, and about 40 to 50 alleged demonstrators alleging that they have committed offenses punishable under Section 188 of Indian Penal Code (for short “IPC”) and Section 135 of Maharashtra Police Act, 1951.

7. The investigating agency investigated the allegations and filed Charge-sheet No.79 of 2017 before the learned Judicial Magistrate First Class only against six persons including the present applicant, alleging the commission of offenses under Section 188 of IPC and Section 135 of Maharashtra Police Act. Aggrieved by this action, the applicant is before us seeking aforesaid relief.

8. Shri Vyas, learned counsel for the applicant submits that having regard to the provisions of Section 188 of IPC and Section 195 of Code of Criminal Procedure (for short “Cr.PC.”),

the learned Magistrate has no power to take cognizance of the offenses alleged, based on the procedure adopted by non-applicant in the present case. He submits that cognizance can be taken only upon a complaint by the public servant whose order is alleged to have been disobeyed or some other public servant to whom he is administratively subordinate. Shri Vyas submits that the offense punishable under Section 135 of the Maharashtra Police Act provides for a penalty of a maximum of one-year imprisonment. He, therefore, submits that such offense is non-cognizable and non-applicant had no jurisdiction to register an FIR or investigate into the same. He relied on the decision of the Hon'ble Supreme Court in **C. Muniappan and others Vs. State of Tamil Nadu** reported in **AIR 2010 SC 3718** in support of his submissions.

9. Shri S.S. Doifode, learned Additional Public Prosecutor for non-applicant/State, submits that in this case since the police authorities have themselves filed the charge-sheet and therefore, there is substantial compliance with the provisions of Section 195 of Cr.P.C. and there is no serious error in the procedure adopted. He submits that since Section 188 is a cognizable offense, there was nothing wrong in clubbing in the charge sheet, the offense punishable under Section 135 of the

Maharashtra Police Act and launching the prosecution against the applicant under the said provision as well. He, therefore, submits that this application may be dismissed.

10. The rival contentions now fall for our determination.

11. Section 188 of the IPC deals with interim alia with offenses involving disobedience to orders duly promulgated by a public servant. The section provides that 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 one thousand rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes 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, with both. The Explanation clarifies that 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.

12. In this case, from the allegations, we are not too sure if the ingredients of Section 188 were at all made out because there is nothing on record to indicate the refusal of permission by the Senior Police Inspector was something made known to the present applicant or the applicants against whom the impugned charge sheet was ultimately filed. There is also no clarity as to how these six persons were chosen when the FIR had alleged that there were about 40 to 50 demonstrators.

13. Be that as it may, we do not propose to interfere with the FIR or prosecution based on the above grounds, because, we are satisfied that interference is warranted on at least two formidable grounds referred to hereinafter.

14. Firstly, Section 195 of Cr.P.C. provides that no Court shall take cognizance of any offense punishable under Sections 172 to 188 (both inclusive) of the IPC, *except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate*. Section 2(d)

defines 'complaint' to mean 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 offense, *but does not include a police report*.

15. Now, in this case, there is no dispute that the charge-sheet filed before the learned Magistrate is not a complaint in writing of the public servant concerned i.e. Senior Police Inspector who declined the permission to hold demonstrations or of some other public servant to whom he was administratively subordinate. In the absence of any such complaint, the Magistrate, will not be in a position to take cognizance of the offense punishable under Section 188 of the IPC having regard to a clear provision of 195(1) (a) of Cr.P.C. For this reason itself, the applicant will be entitled to relief in terms of prayer clauses (i) and (ii) above insofar as the offense under Section 188 of the IPC is concerned.

16. In **C. Muniappan** (supra), the Hon'ble Supreme Court after considering the scheme of provisions of Section 195 of Cr.P.C. has held that Section 195(a)(i) of Cr.P.C bars the court from taking cognizance of any offense punishable under Section 188 of IPC unless there is a written complaint by the public servant

concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks the competence to take cognizance in certain types of offenses enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will, or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 of Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offenses until and unless a complaint has been made by some particular authority or person.

17. In paragraph 25, the Hon'ble Supreme Court summarized the position and held that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Cr.PC are mandatory. Non-compliance with them would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such

complaint. In the absence of such a complaint, the trial and conviction will be void *ab initio* being without jurisdiction.

18. In paragraph 27, the Hon'ble Supreme Court further held that the law does not permit taking cognizance of any offense under Section 188 IPC unless there is a complaint in writing by the competent Public Servant. In the case before the Hon'ble Supreme Court, since no such complaint had ever been filed, taking into account the settled legal principles, the Hon'ble Supreme Court held that it was not permissible for the trial Court to frame a charge under Section 188 of the IPC. Ultimately, charges under Section 188 were quashed.

19. Having regard to the clear and cogent provision of Section 195(1)(a) of Cr.Pc. and the above decision of the Hon'ble Supreme Court, relief will have to be granted to the present applicant insofar as he is sought to be prosecuted for the charge punishable under Section 188 of the IPC.

20. The applicant has also been charged with having committed an offense punishable under Section 135 of the Maharashtra Police Act. From the perusal of the provisions of Section 135 of the said Act, it is apparent that the maximum penalty provided for the offenses may extend to imprisonment of

one year. The First Schedule of Cr.P.C. (part II) classifies offenses against other laws i.e. offenses other than those specified in the IPC. Therein it is provided that if offense against other law is punishable with imprisonment for less than 3 years or with fine only, then the same will be non-cognizable.

21. Since in this case, the prosecution cannot proceed under Section 188 of IPC, what will remain is only prosecution under 135 of the Maharashtra Police Act. Having regard to the provisions of Part-II of First Schedule of Cr.Pc. the offense under Section 135 will be non-cognizable since the maximum penalty prescribed for them is not to exceed imprisonment of one year. Therefore, neither the police nor the Magistrate based on police report will have jurisdiction to take cognizance of a non-cognizable offense. In such a situation, relief insofar as it concerns charges under Section 135 of the Maharashtra Police Act also deserves to be granted in this matter.

22. Even otherwise, it will no longer be in the interests of justice to continue with this prosecution. The only allegation is that in the year 2016 the permission was applied to hold demonstrations and even though the permission was declined the demonstrations were held by 40 to 50 persons. There is no clarity

about whether the order declining the permission was made known to demonstrators. The procedures contemplated under the Cr.P.C. have also not been followed. The continuance of the prosecution under such circumstances will therefore not be in the interests of justice.

23. Though, this application has been filed by only one of the applicants who has been charge-sheeted, the record indicates that five other persons, in addition to the applicant, are named in the impugned charge sheet. Now that we have concluded that filing of such charge-sheet was incompetent or that based on such charge-sheet the Magistrate will have no power to take cognizance of the offenses, it is only appropriate that the entire charge-sheet against all the six persons is hereby quashed.

24. Accordingly, we make the Rule absolute in terms of prayer clauses (i) and (ii) referred to hereinabove and further clarify that the impugned charge-sheet shall stand quashed in its entirety against all six persons, who have been charged thereunder. There shall be no order for costs.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)