

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.7560 of 2020

Date of decision: 22.01.2021

Sonia and another

..Petitioners

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Vivek Chauhan, Addl. AG, Haryana.
for the respondent -State.

Ritu Bahri, J. (Oral)

Petitioners are seeking a writ of certiorari for quashing of order dated 14.05.2020 (Annexure P-8) passed by learned Additional Sessions Judge, Faridabad in a protection petition No.84 of 2020 titled as ***Sonia and another vs. State of Haryana and others***, whereby the Additional Sessions Judge has directed registration of FIR for having solemnized marriage without permission from District Administration on 07.05.2020. A further prayer has also been made for quashing of FIR No.244 dated 15.05.2020 registered under Section 188 IPC at Police Station Sector-7, Faridabad (Annexure P-9) on the ground that there was no ban on solemnization of marriages and no permission was required for the same during lockdown. The only restriction imposed was on gathering of guests to the maximum of 50.

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Petitioner No.1 is 22 years old girl and her date of birth is 01.05.1998 and petitioner No.2 is 24 years boy and his date of birth is 01.01.1996. The Aadhar Card of petitioners No.1 and 2 are annexed as Annexure P-1 and Annexure P-2, respectively. The petitioners belong to different casts and family of petitioner No.1 refused to give their consent for the marriage and they threatened them with dire consequences in case, said marriage is solemnized. As per details in para No.4, the father of petitioner No.2 was suffering from Hyper Kalaemia a kind of cancer. Keeping in view the medical condition of father of petitioner No.2, the petitioners decided to solemnize marriage. Medical documents of father of petitioner No.2 are annexed as Annexure P-3 (colly). Both the petitioners solemnized their marriage at Arya Samaj Mandir, Sector-65, Faridabad on 07.05.2020. Except the petitioners, there were two witnesses along with the Pandit. A copy of marriage certificate dated 07.05.2020 is placed on record as Annexure P-4 and photograph of marriage is annexed as Annexure P-5. Petitioners thereafter approached for protection and filed protection petition bearing No. PP-84 of 2020 (Annexure P-6) before the Duty/Additional Sessions Judge, Faridabad on 12.05.2020 and vide order dated 14.05.2020 (Annexure P-8), he observed that petitioners No.1 and 2 contracted marriage on 07.05.2020 during lockdown period without taking permission. Rakesh Pandit has contracted their marriage and they have violated the orders passed by the Government of India and District Magistrate, Faridabad and a criminal case be registered against all the three persons. The FIR was registered under Section 188 IPC.

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After issuing notice of motion, reply has been filed by Assistant Commissioner of Police, Ballabgarh, District Faridabad on 03.11.2020 and it is justified that FIR No.244 dated 15.05.2020 under Section 188 IPC was registered at Police Station Sector-7, Faridabad. As per guidelines dated 01.05.2020, all social functions to remain prohibited across the country and all religious places will continue to remain prohibited and in these circumstances, the marriage could not be solemnized in Arya Samaj Mandir without permission.

The High Court of Chhattisgarh in ***Dr. Apurva Ghiya vs. State of Chhattisgarh, Writ Petition (Cr.) No.310 of 2020, decided on 07.10.2020*** was considering a petition where FIR under Section 188 was registered and has quashed the FIR registered under Section 188 IPC by observing that the object of Sections 188 and 195 IPC 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.

Section 195 IPC is reproduced 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

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concerned or of some other public servant to whom he is administratively subordinate;”

In the matter of ***State of U.P. Vs. Mata Bhikh and others*** (1994) 4 SCC 95 Hon'ble the Supreme Court dealt with Section 195(1)(a)(i) of the Code and observed as under:-

*“6. The object of this section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the section without which the trial under Section 188 of the Indian Penal Code becomes void ab initio. See **Daulat Ram v. State of Punjab** (supra). To say in other words a written complaint by a public servant concerned is sine qua non to initiate a criminal proceeding under Section 188 of the IPC against those who, with the knowledge that an order has been promulgated by a public servant directing either 'to abstain from a certain act, or to take certain order, with certain property in his possession or under his management' disobey that order. Nonetheless, when the court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the section itself which is to the effect that no court can take cognizance of any offence punishable under Sections 172*

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to 188 of the IPC except on the written complaint of 'the public servant concerned' or of some other public servant to whom he (the public servant who promulgated that order) is administratively subordinate."

Reference was made to Madras High Court in the matter of ***Jeevanandham and others vs. State and another 2019(1) MLJ (Cri.) 36*** wherein a police officer cannot register an FIR for any of the offences falling under Section 172 to 188 of the IPC. The role of the police officer is confined only to the preventive action as stipulated under Section 41 of Cr.P.C. 1973.

Reference was also made to a recent judgment in the matter of ***Union of India vs. Ashok Kumar Sharma and others, Criminal Appeal No.200 of 2020 decided on 28.08.2020*** and the FIR was quashed by relying upon the judgment rendered by Hon'ble the Supreme Court in ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335***.

In the present case, it is not the case of the respondents in the written statement that there was gathering of more than 50 persons in the marriage of the petitioners. As per marriage certificate, the marriage was attended by the petitioners, two witnesses and one Pandit.

In the present case, no written complaint was made to any Court by any public servant or some other public servant, who was subordinate, as contemplated under Section 195(1)(a)(i) IPC as per law referred above. As per judgments rendered in ***Bhajan Lal's case (supra)*** and ***Mata Bhikh's case (supra)***, the FIR could not be registered by the Police as there was no ban on marriages.

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Hence, no offence is made out to register FIR under Section 188 IPC. The writ petition is allowed and FIR No.244 dated 15.05.2020 registered under Section 188 IPC at Police Station Sector-7, Faridabad (Annexure P-9) is being quashed.

22.01.2021
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(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No