

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-24230-2021

Date of decision: 02.08.2021

Vasid @ Basid

...Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: - HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vishal Gupta, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

JASGURPREET SINGH PURI, J.(ORAL)

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.257 dated 30.12.2020, under Sections 188/34 of Indian Penal Code, 1860, registered at Police Station Sanoli, District Panipat.

Learned counsel for the petitioner has submitted that the present FIR has been lodged under Section 188 read with Section 34 IPC on the basis of complaint made by Deputy Chief Executive Officer, Zila Parishad, Panipat on the ground that the petitioner had installed an unauthorized tower in village Jalalpur without any permission from the authorities concerned and, therefore, the present FIR is being lodged. The learned counsel submitted that the lodging of the FIR was without jurisdiction as the FIR is under Section 188 IPC and for that purpose the appropriate procedure and method is provided under Section

195 of the Code of Criminal Procedure wherein it is provided that no Court shall take cognizance of any offence punishable under Sections 172 to 188 IPC (both inclusive) except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. The learned counsel has relied upon a Division Bench judgment of this Court in '**Jiwan Kumar Versus State of Punjab and others**', [2009(1) **RCR (Criminal) 415**], decided on 18.03.2008 and submitted that the lodging of the FIR straightaway by the police was without jurisdiction as the only remedy available was to file a criminal complaint before the competent Court. While referring to para No.8 and para No.10 of the aforesaid judgment the learned counsel has submitted that a Division Bench of this Court had categorically held that for Section 188 IPC no FIR can be registered by the police and it would not be open to police to register a case against the offender for offence under Section 188 IPC and then to submit a report under Section 173 of the Code to the concerned Court. Para No.8 and 10 of the aforesaid judgment of the Division Bench is reproduced as under:-

“8. Coming to the attack of the petitioner in regard to the registration of the F.I.R., it may be noticed that proceedings under Section 188 Indian Penal Code can only be initiated on the basis of a complaint in writing of the public servant concerned made to the Court or to some other public servant to whom he is administratively subordinate. Section 195(1) of the Code restrains the Court from taking cognizance of any offence punishable under Section 188 Indian Penal Code unless a complaint in writing is made to it by the public servant concerned. In other words, no FIR can be registered by the police. It would not be open to the

police to register a case against the offender for offence under Section 188 Indian Penal Code and then to submit a report under Section 173 of the Code to the concerned Court. Reliance in this regard can be placed on Jagtar Singh v. Union Territory, Chandigarh, 1996 (1) RCR 669, wherein this Court held as under : "These facts are not disputed. Language of Section 195(1) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence the provisions of Criminal Procedure Code or Penal Laws have to be strictly construed so as to be given meaning except what is intended by the Legislature in the language used itself. The relevant portion of Section is that, "No Court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate." The intention appears to be clear that where an offence is committed under Section 188 Indian Penal Code, the Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned Court is dependent upon the complaint in writing by such officer or an officer superior to such officer. The counsel for the petitioner has relied upon Sawaran Singh v. The State of Punjab, 1994(3) Recent CR 352 and Bhagat Ram v. The State of Punjab, 1991(1) Recent CR 192. In both these cases the Court has indicated that the scope of Section 195(1) of the Code does not contemplate investigation in a normal way by the police and filing of the challan, but the complaint has to be presented

directly to the concerned Court. In the present case though the complaint is stated to be addressed to the Court, but as it appears it was not presented to the Court and the Court did not pass any orders at that stage.

10. It is, thus, clear that the proceedings against the petitioner under Section 188 Indian Penal Code have been initiated on the basis of the F.I.R. and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1)(a) of the Code. The registration of F.I.R. and the launching of proceedings thereafter against the petitioner is not permitted by the Code and thus, cannot be allowed to be sustained.”.

Mr. Naveen Singh Panwar, learned Deputy Advocate General, Haryana has however not disputed the application of proposition of law as observed in aforesaid Division Bench judgment in ***Jiwan Kumar Versus State of Punjab and others (supra)*** on the facts of the present case. He has submitted that reply has been filed by the State through email in which it has been stated that the petitioner has made a disclosure statement that tower was installed in his property/plot from one Indus Company about one year ago and that he had not taken any permission from Zila Parishad or Revenue Officer. Furthermore, the company has also been made accused in the present FIR. The learned State counsel submitted that the matter is an investigation stage. However, on being pointedly asked as to how the present FIR would be maintainable in view of the provisions of Section 195(1) Cr.P.C. and the law laid down by a Division Bench of this Court, the State counsel has not been able to justify the same. The learned State counsel has submitted that the offence was cognizable in

nature.

I have heard the learned counsel for the parties.

Section 195(1) Cr.P.C. specifically provides that no Court shall take cognizance of any offence which is punishable under Section 188 IPC except on a complaint in writing of a public servant concerned or of some other public servant to whom he is administratively subordinate.

In the present case the police has straightway got registered the FIR in violation of the aforesaid provisions of law. A Division Bench of this Court in *Jiwan Kumar Versus State of Punjab and others (supra)* has also laid down that no FIR can be registered under Section 188 IPC straightaway on the information given by the complainant and, therefore, the lodging of the FIR on the face of it was without jurisdiction.

In view of the above, the present petition is allowed and FIR No.257 dated 30.12.2020, under Sections 188/34 of Indian Penal Code, 1860, registered at Police Station Sanoli, District Panipat is hereby quashed qua the petitioner.

(JASGURPREET SINGH PURI)
JUDGE

02.08.2021

rakesh

whether speaking	:	Yes/no
whether reportable	:	Yes/no