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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 6th September, 2021

Decided on: 12th October, 2021

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CRL.M.C. 1681/2021

SARMAD AHMED

..... Petitioner

Represented by: Mr.M.R. Shamshad, Mr.Arijit Sarkar
and Ms.Nabeela Jamal, Advocates.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Represented by: Mr.G.M. Farooqui, APP for the State
with SI Vijay, PS Madhu Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, petitioner seeks quashing of charge-sheet dated 2nd April, 2021 filed by the respondent/State in FIR No.102/2020 dated 7th April, 2020 registered at PS Madhu Vihar, District East, New Delhi for offences punishable under Section 188 IPC and Section 3 of the Epidemic Disease Act, 1897.
2. Grievance of the petitioner in the present petition is to the invocation of the quarantine order retrospectively and on the basis of an alleged violation based on the phone call detail of the petitioner, the above noted FIR stood registered and a charge-sheet filed.
3. Briefly the facts resulting in registration of the FIR No.102/2020 are that the petitioner left India for France on 19th October, 2019 and returned back to India on 5th February, 2020. When the petitioner returned back to India no orders directing mandatory institutional/home quarantine were in force. On 30th January, 2020, WHO declared Covid-19 as a public health

emergency. Much after the petitioner came back to India from France on 5th February, 2020, the Government of India on 12th March, 2020 issued guidelines in the wake of Covid-19 situation thereby asking people to follow mandatory quarantine norm of 15 days for those who had travelled to and from China, Italy, Iran, Republic of Korea, France, Spain and Germany.

4. On 14th March, 2020 a person representing to be from Health Department visited the residential premises of the petitioner and asked about his travel plans which the petitioner informed. The petitioner also informed that he had no symptoms of Covid-19. On 22nd March, 2020 the Government of India announced one day Janta Curfew followed by the complete lockdown for a period of 21 days in order to contain the effect of spread of Covid-19. On 7th April, 2020 the above noted FIR was registered against the petitioner under Section 188 of the IPC, Section 3 of the Epidemic Disease Act, 1897.

5. The allegations in the FIR were that the petitioner was directed to keep himself in home quarantine from 16th March, 2020 to 30th March, 2020. To track the movement of the petitioner the CDR of his mobile phone was taken out and it was noticed that on 19th, 20th, 23rd March, 2020 and many other times he violated the condition of home quarantine, visiting various places without informing the competent authority, thereby endangering the life of general public.

6. On 4th December, 2020 the petitioner came to know about the registration of the said FIR. On 25th March, 2021 the petitioner was served with a notice under Section 41A of Cr.P.C. to appear at PS Madhu Vihar on 27th March, 2021 at 4.00 PM. On 2nd July, 2021 summons were issued to the petitioner. On 7th July, 2021 the petitioner received a phone call from PS

Madhu Vihar asking him to collect the summons, hence the present petition.

7. As per the FIR, on 19th, 20th, 23rd March, 2020 and many other times, the petitioner violated the norms which fact came to be known to the respondent by analysing the call detail records of the petitioner. A status report in response to the present petition has been filed by the State. According to the status report, the CDR of the petitioner's mobile phone was obtained from 15th March, 2020 to 6th April, 2020 and on 3rd April, 2020 the petitioner was found violating as he was found roaming at different places on 3rd April, 2020.

8. Relevant clauses 12 and 17 of the guidelines issued by the Ministry of Home Affairs dated 24th March, 2020 are as under:

"12. All persons who have arrived into India after 15.02.2020, and all such persons who have been directed by health care personnel to remain under strict home/institutional quarantine for a period as decided by local Health Authorities, failing which they will be liable to legal action under Sec. 188 of the IPC.

x x x

17. Any person violating these containment measures will be liable to be proceeded against as per the provisions of Section 51 to 60 of the Disaster Management Act, 2005, besides legal action under Sec. 188 of the IPC."

9. The issue in the present petition is that the petitioner having come to India on 5th February, 2020 whether the guidelines issued by the respondent, which were applicable from 15th February, 2020, could have been made applicable to the petitioner from 5th February, 2020. It is well settled that a restriction cannot be imposed retrospectively. The guidelines dated 24th March, 2020 were made applicable from 15th February, 2020. However, the petitioner had entered India on 5th February, 2020 and not on/or after 15th

February, 2020. As per the charge-sheet, the petitioner violated the quarantine order dated 16th March, 2020 which was in force till 30th March, 2020 when the guidelines were applicable to the people who had come on or after 15th February, 2020 the petitioner not falling in that category having entered India on 5th February, 2020. Thus, this Court is of the considered view that the very genesis of the prosecution case against the petitioner is faulted. Further though the case in the charge-sheet is for violation on 19th, 20th and 23rd March, 2020 till 30th March, 2020 however, now in the status report it is alleged that the petitioner was out on 3rd April, 2020. It is thus evident that an all together new case is now being made out in the status report which is contrary to the charge sheet.

10. Be that as it may, besides the conflicting stands in the charge-sheet and the status report, the fact that once the guidelines issued on 24th March, 2020 were applicable for people entering India on or after 15th February, 2020 the same could not have been given further retrospective operation for the petitioner who had arrived in the country on 5th February, 2020, therefore the petitioner cannot be subjected to the prosecution for the offences as mentioned above.

11. Consequently, FIR No.102/2020 under Section 188 of the IPC and Section 3 of the Epidemic Disease Act, 1897, registered at PS Madhu Vihar, East District, New Delhi and the proceedings pursuant thereto are quashed.

12. Petition is disposed of.

13. Order be uploaded on the website of this court.

(MUKTA GUPTA)
JUDGE

OCTOBER 12, 2021/‘vn’