

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

CRIMINAL APPLICATION (APL) NO.628 OF 2020

APPLICANT : Shri Suyash s/o Sunil Sukhani, Aged
about 26 years, Occ: Business, R/o. Plot
No.203, Pritam Goodwill Apartment,
Wardhaman Nagar, Nagpur.

//VERSUS//

RESPONDENT : The State of Maharashtra, through
Police Station Officer, Police Station-
Nandanwan, Nagpur.

Mr. Akshay Naik, Advocate with Madhur Deo, Advocate for
the Applicant.

Mr. S.M. Ghodeswar, APP for the Non-applicant/State.

CORAM : MANISH PITALE AND
G.A. SANAP, JJ.

DATE : 18th AUGUST, 2022.

ORAL JUDGMENT (Per: Manish Pitale, J.)

Heard finally with the consent of the learned counsel
appearing for the parties. **Admit.**

02] The applicant has approached this Court, seeking quashing of First Information Report No.255/2020, registered at Police Station Nandanwan, Nagpur, whereby offences under Sections 188 and 270 of the Indian Penal Code, 1860 (IPC) and Section 3 of the Epidemic Diseases Act, 1897, as also Section 51(b) of the Disaster Management Act, 2005, were registered against the applicant.

03] While issuing notice on 14.07.2020, this Court directed that though the investigation may go on, the charge-sheet against the present applicant may not be filed, until further orders.

04] The application was taken up for final disposal today. Mr. Naik, learned counsel appearing for the applicant submitted that in terms of the position of law now clarified by this Court, the FIR deserves to be quashed. It is submitted that this Court had an occasion to deal with the questions sought to be raised in the present application, in the case of *HLA SHWE and others Vs. State of Maharashtra through Police Station Tahsil, Nagpur* reported in *2020(6) Mh.L.J. (Crl.) 624*. It was further submitted

that in a recent judgment dated 10.08.2022, passed in Criminal *Application (APL) No.402/2021 (Swapnil s/o Suresh Keshav Tandulkar & Ors. Vs. State of Maharashtra through Police Station Officer, Nandgaon, Amravati and another)*, this Court followed the aforesaid position of law to hold in favour of the applicants, who were similarly situated like the applicant in the present application.

05] Mr. S.M. Ghodeswar, learned Assistant Public Prosecutor appeared on behalf of the non-applicant/State and he could not distinguish the present case from the cases on which the learned counsel for the applicant has placed reliance.

06] In the present case, the allegation, leading to registration of FIR against the applicant was that, on the date and time of the incident, when the informant/complainant i.e. a police official was on patrolling duty, he found the applicant sitting on his two wheeler and roaming around without any reason, thereby violating the provisions of the Epidemic Diseases Act, 1897 and Disaster Management Act, 2005 and also leading to offences under Sections 188 and 270 of the IPC.

07] It is the specific contention of the applicant that none of the ingredients of the said offences are made out and that in the light of the settled position of law, proceedings could have been initiated against the applicant under the aforesaid provisions, only by way of filing an appropriate complaint before the Magistrate and not by way of submitting information before the Police Authority for invoking Section 154 of the Code of Criminal Procedure, 1973 (Cr.PC). It was submitted that since the very initiation of the proceedings is without authority, the same deserve to be quashed at this stage itself.

08] The position of law clarified by this Court in the case of *HLA SHWE and others Vs. State of Maharashtra through Police Station Tahsil, Nagpur* (supra), in the context of offence under Section 188 of the IPC, is as follows:

“18. Section 188 of the Indian Penal Code deals with disobedience to orders duly promulgated by the public servant. The offence, as already stated, is allegedly disobedience to the orders duly promulgated by the Collector. Section 195 of the Code lays down that no Court shall take cognizance of any offence punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code, except on the complaint in writing to the public servant concerned or of some

other public servant to whom he is administratively subordinate. In the present case, there is no complaint filed by Collector or his subordinate officer. The Sub-Inspector of Police has filed the charge-sheet. In **Daulat Ram v. State of Punjab [AIR 1962 SC 1206]**, the Hon'ble Supreme Court held that the prosecution under Section 182 of the Indian Penal Code must be on a complaint in writing by the Tahsildar (public servant). In view of absolute bar against the Courts for taking cognizance of the offence punishable under Section 182 of the Indian Penal Code, except in the manner provided by Section 195 of the Code, the said judgment equally applied to the offence under Section 188 also. In the present case, there is no complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate. Therefore, in view of the bar under Section 195(1)(a) of the Code, the learned Magistrate ought not to have taken cognizance of the offence punishable under Section 188 Indian Penal Code on the report submitted by the Sub-Inspector of Police. Therefore, we are of the considered view that the cognizance is taken contrary to the specific bar envisaged under Section 195(1)(a) of the Code. In **M.S.Ahlawat v. State of Haryana [2000(1) SCC 278]**, the Hon'ble Supreme Court considered the provisions prescribed under Section 195 of the Code at length and observed in paragraph 5 as under:

“5. ...Provisions of Section 195 CrPC, 1973 are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section.”

19. In **C. Muniappan v. State of T.N., [(2010) 9 SCC 567]**, the Hon'ble Supreme Court observed in para 33 as under:

“33. Thus, in view of the above, the law can be summarized to the effect 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.P.C. are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the cases without such a complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.”

20. In that view of the matter, no prosecution could have been launched against the applicants under Section 188 of the Indian Penal Code based on a written report submitted by the Police. No F.I.R. could have been registered by the police for an offence punishable under Section 188 of the Indian Penal Code. The legislative intention appears to be clear from the language of Section 195(1) of the Code, which prescribes that where an “offence” is committed under Section 188 of the Indian Penal Code, it would be obligatory that the public servant before whom such an “offence” is committed, should file a complaint before the jurisdictional Magistrate either orally or in writing. Hence, registration of an F.I.R. for an offence under Section 188 of Indian Penal Code is not permitted in law at the instance of Police.”

09] As noted above, in the recent judgment of ***Swapnil s/o Suresh Keshav Tandulkar & Ors. Vs. State of Maharashtra through Police Station Officer, Nandgaon, Amravati and another*** (supra), the aforesaid position of law was followed and FIR was

quashed. It is recorded in the said recent judgment that the offences under the provisions of the Epidemic Diseases Act, 1897 are necessarily relatable to Section 188 of the IPC, thereby indicating that offence under the provisions of the said Act, could not have been registered on the basis of an oral report submitted by non-applicant No.2. Therefore, it is found that insofar as the offences under Section 188 of the IPC and Section 3 of the Epidemic Diseases Act, 1897 are concerned, the FIR deserves to be quashed.

10] Insofar as Section 270 of the IPC is concerned, which pertains to malignant act likely to spread infection of disease dangerous to life, we find that the contents of the FIR do not even *prima facie* disclose ingredients of the said offence. Therefore, the applicant has made out a case in his favour, insofar as the quashing of the FIR in respect of the said offence is concerned. That leaves us only Section 51(b) of the Disaster Management Act, 2005, which pertains to refusal of a person to comply with any direction given by or on behalf of the Central Government or State Government or the Authorities, specified therein without

reasonable cause. In this case, a bare reading of the FIR shows that the ingredients are absent and in any case, action for the aforesaid offence under Section 51 (b) of the said Act, would also have been initiated by a properly framed complaint to be filed before the Magistrate.

11] In addition, the learned counsel for the applicant has brought to the notice of this Court that even if a direction contemplated in the form of an order under Section 144 of the Cr.PC was existing on the date and time of the incident, a perusal of the order, would show that there are specific exceptions carved out, which include places where food items and vegetables etc. are stored.

12] We are convinced that in the face of the material placed on record and the position of law brought to our notice, the FIR as it stands cannot be sustained and that it deserves to be quashed.

13] Accordingly, the application is **allowed** in terms of prayer Clause (i), which reads as follows:

i) quash and set aside First Information Report No.0255/2020 dated 15/04/2020 registered by respondent- Police Station, Nandanwan, Nagpur against the applicant for the offence punishable under section 188, 270 of the Indian Penal Code, section 51(b) of the Disaster Management Act, section 3 of the Epidemic Diseases Act, 1897.

(G.A. SANAP, J.)

(MANISH PITALE, J.)

Vijay