

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

CRIMINAL APPLICATION (APL) NO.691 OF 2020

{Arunkumar S/o Ramdas Khaire ..Vrs.. The State of Maharashtra and
Anr.}

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri T. S. Deshpande, Advocate for the Applicant.
Shri S. M. Ukey, APP for the Non-Applicant No.1/State.

CORAM : MANISH PITALE AND
VALMIKI SA MENEZES, J.J.

DATE : 30th AUGUST, 2022.

1. By this application, the applicant is seeking quashing of First Information Report (FIR) No.331 of 2020, dated 15.05.2020, registered at Police Station Mahagaon, Yavatmal, for offences under Sections 188 and 269 of the Indian Penal Code (IPC).

2. Shri Deshpande, learned counsel appearing for the applicant submits that the contentions raised on behalf of the applicant in this application are already accepted by this Court in similar case in the case of **HLA Shwe and others .vs. State of Maharashtra, 2020 (4) Bom. C.R. (Cri.) 154.** It is submitted that even if the allegations made in the oral report, leading to registration of the FIR, are accepted as it is, the FIR cannot be sustained and it deserves to be quashed.

3. By relying upon the aforesaid judgment, the learned counsel for the applicant submitted that for initiating criminal proceeding under Section 188 of the IPC, complaint ought to have been filed and the FIR could not be registered, particularly when the ingredients of the offence under Section

269 of the IPC, are also not made out, even on a bare reading of the FIR.

4. Shri Ukey, learned Assistant Public Prosecutor for the non-applicant no.1/State, on the other hand submitted that since offence under Section 269 of the IPC, was also registered alongwith offence under Section 188 of the IPC, it could not be said that the FIR deserved to be quashed, because for invoking criminal proceedings in respect of Section 188 of the IPC, only a complaint could have been filed. It was emphasized that in the present case, offence only under Section 188 of the IPC, was not alleged against the applicant and that specific offence under Section 269 of the IPC, was also alleged.

5. Before dealing with the facts of the present case, it would be appropriate to refer to the relevant portions of the judgment of the Division Bench of this Court in the case of *HLA Shwe and others .vs. State of Maharashtra* (supra).

6. While dealing with offences under Sections 269 and 270 of the IPC, after quoting the said provisions, in the said judgment, it was held as follows :

“14. To attract ingredients of Sections 269 and 270, the person must commit any act which he knows is likely to spread infection of any disease which is dangerous to life. It is not in dispute that the applicants had undergone Covid-19 test during their period of quarantine i.e. from 03.04.2020 and their test report for infection of Covid-19 was negative. It is also not disputed that they were kept in isolation

from 24.03.2020 till 31.03.2020 under the supervision of Dr Khawaj, NMC Zonal Officer, Mominpura, Nagpur. There is no material on record to prove that applicants had indulged in any act which was likely to spread infection of COVID-19. Therefore, from the material produced in the charge-sheet, there is no evidence to substantiate the fulfillment of ingredients of Sections 269 and 270 of the Indian Penal Code.”

7. As regards offence under Section 188 of the IPC, in the said judgment, it was held as follows :

“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 the Indian Penal Code is not permitted in law at the instance of Police.”

8. In the backdrop of the said position of law, we have perused the oral report in the present case, leading to registration of the FIR against the applicant offences under Sections 188 and 269 of the IPC. We find that the thrust of the allegations against the applicant was that he had left his head quarters without permission and that he had travelled to his hometown. Being an employee of the Revenue Department, he was directed to perform duty during the Covid-19 pandemic and his act of leaving the head quarters without permission and travelling in unknown vehicle and further conceding in his reply to a show cause notice that he was suffering from fever and cold, indicated that he had committed offences under Sections 188 and 269 of the IPC.

9. We are of the opinion that even if the contents of the FIR are to be accepted as it is, the ingredients of offence under Section 269 of the IPC, are not made out on the touchstone of the law laid down by the Division Bench of this Court in the aforesaid judgment, particularly in paragraph 14 thereof.

10. Insofar as offence under Section 188 of the IPC is concerned, we are of the opinion that statement made in the oral report leading to registration of the FIR does not indicate the ingredients of the said offence, apart from the fact that admittedly proceedings under the said provision could have been initiated only by filing of a complaint as laid down in paragraph 20 of the aforementioned judgment of the Division Bench of this Court.

11. In view of the above, we find that there is substance in the contention raised on behalf of the applicant and the

application deserves to be allowed.

12. Accordingly, the application is **allowed** in terms of prayer Clause (a), which reads as follows :

“(a) quash and set aside impugned First Information Report No.0331 of 2020 (ANNEXURE-F) dated 15.05.2020 registered at non-applicant no.1 Police Station Mahagaon against applicant for offence punishable under Sections 188, 269 of the Indian Penal Code.”

(VALMIKI SA MENEZES, J.) (MANISH PITALE, J.)

TAMBE