

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

Criminal Misc. No.M-2485 of 2022(O&M)

Date of Decision: July 15, 2022

Sukhjiwan Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.G.S.Jagpal, Advocate for the petitioners.

Mr.R.S.Khaira, AAG, Punjab.

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HARINDER SINGH SIDHU, J.

By filing this petition under Section 482 CrPC, quashing of FIR No.44 dated 01.05.2020 under Sections 188 & 379 IPC (*S.379 IPC deleted and challan presented u/s 188 IPC*), Police Station Mullanpur, District SAS Nagar along with all other consequential proceedings arising therefrom, is sought.

The petitioners are accused in the aforesaid FIR, which was registered on the statement of Assistant Executive Engineer (Op.), Sub Division Mullanpur Garibdass. On the basis of a whatsapp photo, it was reported by the said official that on 30.04.2020, the petitioners had dug out the electricity pole installed inside the boundary wall.

The digging of pole is not disputed. The case of the petitioners is that the said pole was not working for the last more than 20 years and it was not having any hanging wires over it. The pole broke down during

night when tractor-trolley hit the same during the lockdown period. It is further the case of the petitioners that the wrong information was given to the PSPCL Department by their neighbour Manjit Singh to harass the petitioners. There is civil suit pending between the petitioners and said Manjit Singh.

Further, the PSPCL asked the petitioners to deposit the compensation with regard to the pole. The petitioner deposited a sum of Rs.6726/- vide receipt dated 19.05.2020 (Annexure P-5). Thereafter, the complainant made an application to the Police for cancellation of the FIR registered against the petitioners as he did not wish to pursue the same. The Police submitted Cancellation Report dated 16.06.2020 (Annexure P-6). Thereafter, the Superintendent of Police (Rural), SAS Nagar vide communication dated 31.08.2020 (Annexure P-7) also recommended the Cancellation. However, vide letter dated 31.07.2020 (Annexure P-8), the SP(Investigation) wrote to the SHO that the investigation was silent regarding 188 IPC. The Police filed charge-sheet against the petitioner under Section 188 IPC.

Ld. counsel for the petitioner has contended that no offence was made out under Section 188 IPC against the petitioners, inter-alia, for the reasons that the alleged act of digging out the pole was inside the boundary walls of the residence of the petitioners.

Reference has been made to provisions of Section 195(1) CrPC which clearly bars the Court from taking cognizance of any offence punishable under Section 188 IPC unless a complaint in writing is made to it

by Public Servant concerned.

In the present case, the complaint was not made by any Public Servant to the Court, but a report under Section 173(2) CrPC has been presented before the Ld. Ilqa Magistrate without compliance of provisions of Section 195(1) CrPC, which reads as under:-

“Section 195(1)

(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) of any abetment of, or attempt to commit, such offence, or
(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”*

Similar issue came up for hearing before a Division Bench of this Court in **Jiwan Kumar vs. State of Punjab and others, 2009(1) RCR(CrI.) 415.** It was held that it would not be open to the Police to register a case against the offender for offence under Section 188 IPC and then to submit a report under Section 173 CrPC to the concerned Court.

The relevant discussion reads:

“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.”

Accordingly, the petition is allowed. The FIR No.44 dated 01.05.2020 under Section 188 IPC, Police Station Mullanpur, District SAS Nagar and all other consequential proceedings arising therefrom against the petitioners, are quashed.

July 15, 2022
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No