

CRM-M-9551 of 2022

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

CRM-M-9551 of 2022

Reserved on: -16.12.2022

Date of Pronouncement: 22.12.2022

Pritam Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: -Mr. A.S. Dhillon, Advocate, for the petitioner.
Mr. Adhiraj Singh, AAG, Punjab.

NAMIT KUMAR, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.10 dated 04.02.2017 under Section 188 IPC, registered at Police Station Gidderbaha, District Sri Muktsar Sahib, Punjab.

Learned State counsel has filed reply which is taken on record.

Brief facts of the case are that a team of police officials was present and patrolling at Pathi Wala road in private vehicle during ongoing Vidhan Sabha elections with respect to arrest the suspected persons. Police received information from their sources that some persons have gathered in New Dana Mandi Gidderbaha on 04.02.2017 and they could attempt to influence the voters of Vidhan Sabha Halqa Gidderbaha and if on spot raid is conducted on them then all the

CRM-M-9551 of 2022

persons, who are outside voters of Halqa Gidderbaha, can be arrested.

The date of election of Gidderbaha constituency was 04.02.2017.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present FIR as he was not present at the spot. He was arrested from other spot i.e. bus stoppage, where he was waiting for the bus near to Dana Mandi gate. He further submits that the petitioner is nowhere involved in the present case and nothing has been attributed to him in the FIR in question and nothing has been recovered from him, thus, he cannot be held liable for the offence under Section 188 IPC. Learned counsel further submits that limitation for taking the cognizance by the trial Court is one year from the date of commission of offence, however, in the present case cognizance has been taken beyond the period of limitation of one year by passing order dated 26.02.2019. He further submits that in present case there is complete violation of Section 195 Cr.P.C. as the final report under Section 173 Cr.P.C. has been filed without written complaint of the concerned officer whose order under Section 188 IPC has been disobeyed.

During the course of arguments, learned State counsel has not been able to dispute the abovesaid legal aspect of the case.

I have heard learned counsel for the parties and perused the record.

Similar question came up for hearing before Division Bench of this Court in case ***Jiwan Kumar vs. State of Punjab & others, 2009(1)RCR (Criminal) 415*** and it was categorically observed

CRM-M-9551 of 2022

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 Cr.P.C. to the concerned court. Here it would be appropriate to reproduce the relevant paragraph of above referred judgment which reads 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 restraints 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 offence 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, where in 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

CRM-M-9551 of 2022

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.”

Adverting to the facts of the case in hand, FIR in question was registered against the petitioners on 04.02.2017 under Section 188 IPC. Thereafter, petitioner was arrested and interrogated, and after completion of investigation, final report under Section 173(2) Cr.P.C. was presented against him before learned SDJM, Gidderbaha.

From the above referred legal proposition as well as the factual matrix of the case, it is abundantly clear that registration of FIR is nothing but is in complete violation of legal proposition as well as settled canons of law, especially, in the circumstances that admittedly,

CRM-M-9551 of 2022

no complaint in writing by Public Servant concerned has been moved as is required under Section 195(1) Cr.P.C. Thus, registration of FIR and commencement of proceedings qua petitioner is impermissible under the provisions of Code of Criminal Procedure. Thus, it deserves to be quashed.

As per Sections 468 and 469 Cr.P.C. the period of limitation would be one year from the date of commission of offence with respect to Section 188 IPC which as per the FIR is 04.02.2017, meaning thereby the cognizance of the offence under Section 188 IPC was upto 04.02.2018. However, the SDJM, Gidderbaha, in present case had taken the cognizance on 26.02.2019, beyond the period of limitation as detailed in Sections 468 and 469 Cr.P.C.

In view of the foregoing discussion, the petition is allowed. FIR No.10 dated 04.02.2017 under Section 188 IPC, registered at Police Station Gidderbaha, District Sri Muktsar Sahib, Punjab, and subsequent proceedings emanating from it are quashed qua the petitioner only.

22.12.2022
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No