

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 30454 of 2018

Reserved on: 09.8.2022

Date of Decision: 26.8.2022

Devi Dayal Sharma and others

.....Petitioners

Versus

State of U.T., Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. R.S.Cheema, Senior Advocate with
Mr. Kartik Tayal, Advocate
for the petitioners.

Mr. J.S.Toor, Addl. P.P., U.T., Chandigarh.

SURESHWAR THAKUR, J.

1. The present petitioners are alleged to violate a prohibitory order, as issued by the District Magistrate concerned, under Section 144 of the Cr.P.C. The above violation occurred on 25.2.2016, and, an FIR bearing No. 106 of 25.2.2016, constituting therein an offence under Section 188 of the IPC, became registered at Police Station Sector-17, Chandigarh.

2. After completion of investigations into the petition FIR, the investigating officer purportedly took to institute, on 3.4.2018, a report under Section 173 of the Cr.P.C., in the Court of the learned Chief Judicial Magistrate, Chandigarh. Moreover, along with the above report, it is averred that, a complaint, signed by Sh. Ajit Balaji Joshi, District Magistrate, also became instituted, before the learned Chief Judicial Magistrate, Chandigarh.

3. Since the violation of the prohibitory order, as issued by the

District Magistrate concerned, did tantamount to contempt of lawful authority of public servant(s), thereupon when hence an offence, constituted under Section 188 of the IPC, became aroused, and, also made the offence (supra), to resultantly fall within the ambit of sub-Section (1) of Section 195 of the Cr.P.C., provisions whereof become extracted hereinafter. In sequel, the learned Chief Judicial Magistrate concerned, could not take cognizance, upon the police report, but could assume cognizance only on a complaint in writing being made before him, by the public servant concerned, and/or by some other public servant to whom he is administratively subordinate.

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(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;***

4. The order made on 15.5.2018, wherethroughs the apposite jurisdiction(s) besides cognizance(s) became assumed by the learned jurisdictionally empowered Court, in respect of the petitioners allegedly violating the prohibitory order, becomes challenged before this Court. The apposite order becomes extracted hereinafter.

“Complaint presented under Section 195 Cr.P.C. against the accused for the commission of offence under Section 188 IPC. The same be cheked and registered.

Complainant is the District Magistrate, Chandigarh and has filed the complaint in his capacity as public servant in due discharge of his official functions. In such circumstances, recording of preliminary evidence is dispensed with. Further, personal appearance of complainant is exempted till further orders and learned APP for the State shall prosecute and put in appearance on behalf of the complainant on each date of hearing.

Heard. After going through the contents of complaint and documents appended therewith, sufficient grounds are made out to issue process against the accused for commission of offence under Section 188 IPC. Accused are present in the Court in person. Offence being bailable, the accused are admitted to bail on furnishing bail bonds in the sum of Rs. 10,000/- with one surety. Requisite bonds furnished, accepted and attested. Copy of complaint and documents appended therewith have been supplied to the accused vide separate statement. For service of notice of accusation upon the accused, on request adjourned to 3.7.2018.”

5. A perusal of the above extracted order reveals, that rather than the assumption of cognizance, and, jurisdiction, being taken by the jurisdictionally empowered Magistrate, hence on a police report, rather the apposite assumption of jurisdiction, and, cognizance being taken on a complaint constituted under Section 195 of the Cr.P.C., and, it being signed by the District Magistrate, Chandigarh. Though, the above complaint instituted by the District Magistrate, Chandigarh, before the jurisdictionally empowered Court, did foist the apposite valid jurisdiction, in the learned CJM, Chandigarh, to assume cognizance thereon, but for the reasons to be assigned hereinafter, the assumptions of cognizance, and, also of jurisdiction, upon the complaint instituted under Section 195 of the Cr.P.C., on 15.5.2018, in respect of the ill-fated occurrence, which occurred on 25.2.2016, is completely defective, as also is legally flawed.

6. The reason(s) for making the above conclusion, becomes derived from Section 468 of the Cr.P.C., provisions whereof become extracted hereinafter, rather completely barring the assumption(s) of

cognizance, and, jurisdiction, rather by the jurisdictionally empowered Court, in respect of offences mentioned therein, conspicuously beyond the period of limitation prescribed therein. The apposite period of limitation, as prescribed in sub-Section (2) of Section 468 of the Cr.P.C., and, as appertaining to the instant crime event embodying an offence punishable under Section 188 of the IPC, is one year, from the date of commission of crime, as the maximum sentence of imprisonment in respect thereof, as, imposable, upon the convict extends upto a term of only six months.

“468. Bar to taking cognizance after lapse of the period of limitation.

(1) x x x x x

(2) The period of limitation shall be-

- (a) six months, if the offence is punishable with fine only
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
- (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.”

7. In consequence, the learned District Magistrate, Chandigarh, hence for ensuring that valid cognizance, and, jurisdiction becomes assumed by the Chief Judicial Magistrate, Chandigarh, upon the crime event, rather became enjoined to institute the apposite legally enjoined complaint within one year, from the ill-fated crime event taking place, whereas, he has omitted to do so. In consequence, the institution of a complaint on 15.5.2018, under Section 195 of the Cr.P.C., and, that too, after more than one year elapsing since the crime event taking place, at the crime site, did within the ambit of Section 468 of the Cr.P.C., completely oust the jurisdiction of the CJM, Chandigarh to either assume cognizance thereons,

and/or to issue summons, upon the petitioners, to face a charge for the commission of an offence punishable under Section 188 of the IPC.

8. Though, the above period of limitation is condonable, through an application for condonation of delay, being filed within the domain of Section 473 of the Cr.P.C., but since a reading of the impugned summoning order does not reveal, that the prosecution adopted the above provision for seeking condonation of the apposite delay, resultantly when the apposite period of limitation to be calculated from 25.2.2016, expired on 25.2.2017, and, reiteratedly with the above delay remaining unexplained, besides the complaint being filed, much belatedly therefrom on 15.5.218, did completely disempower the CJM, Chandigarh, to either assume jurisdiction or to take cognizance, upon the complaint filed before him, by the District Magistrate, Chandigarh.

9. In consequence, there is merit in the petition, and, the same is allowed. FIR No. 106 dated 25.2.2016, registered at Police Station Sector-17, Chandigarh, wherein an offence constituted, under Section 188 of the IPC, is embodied, and, also all the consequential proceedings, hence arising therefrom, are quashed qua the petitioners.

10. The personal, and, surety bonds, if any furnished, are ordered to be forthwith cancelled, and, discharged.

(SURESHWAR THAKUR)
JUDGE

August 26th, 2022
Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No