

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRM-M-28821-2022

Reserved on: 09.08.2022

Pronounced on: 26.08.2022

SUKHPAL SINGH KHAIRA

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Argued by: Mr. Surjit Singh Swaich, Advocate
Mr. Abhay Sher Singh Mann, Advocate and
Mr. Mehtab Singh Khaira, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J.

1. FIR bearing No. 60 dated 25.05.2020 constituting therein offences, embodied under Section 188 IPC, under Section 51 of the Disaster Management Act, 2005, and, under Section 3 of the Epidemic Diseases Act, 1897, became registered at Police Station Division No. 4, Police Commissionerate, Jalandhar, District Jalandhar.

2. After completion of investigations into the FIR (supra), a report under Section 173 Cr.P.C. became instituted, on 21.09.2021, by the investigating officer concerned, before the Chief Judicial Magistrate, and, upon its presentation there, as unfolded by the impugned order, as, carried in Annexure P-5, the learned Chief Judicial Magistrate proceeded to issue summons, upon, the accused in the FIR (supra).

3. The petitioner becomes aggrieved from the summoning order, as embodied in Annexure P-5, and, has made a prayer for the

quashing of the summoning order, and, has also made a further prayer for quashing of all consequential proceedings as arise therefrom.

4. The ill performed acts were visibly barred by the law, and or, were done in contempt of lawful authority of public servant, and, as such the provisions of Section 195 of the Cr.P.C., become aroused.

5. In consequence, the learned counsel appearing for the petitioner has argued, that the institution of a police report, by the investigating officer concerned, before the learned Chief Judicial Magistrate, did not empower the jurisdictionally empowered Magistrate to either assume jurisdiction, or, take cognizance thereons, contrarily rather within the ambit of Section 195 (1) of the Cr.P.C, provisions whereof are extracted hereinafter, the learned Chief Judicial Magistrate became empowered to assume cognizance upon the offences concerned, only upon the District Magistrate Jalandhar concerned, either personally instituting a complaint before him, or his authorizing any officer subordinate to him, to institute it, before the jurisdictionally empowered Magistrate.

“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.....”

6. In the above regard, though the District Magistrate Jalandhar, as revealed by an order made on 21.09.2021, did not personally present the challan, before the jurisdictionally empowered Magistrate, but yet after sanction being accorded by him, for prosecuting the petitioner herein qua the petition FIR offences, he through an order drawn on 10.09.2021, and, bearing no. 10944/MC-4/MA, rather authorized in the hereinafter extracted manner, the public

prosecutor concerned, to make appearance(s), on his behalf, before the jurisdictionally empowered Court.

“..... on perusal of the FIR No. 60 dated 25.05.2020, Police Station Division No. 4, Jalandhar received from Commissioner of Police Jalandhar, I reached on this conclusion that the challan of the case against abovesaid accused is liable to be produced before Hon'ble Court, because, due to ban, the accused person by making gathering of the people interfered the orders of this Office bearing No. 9021-9040/M.C.4/M.A. dated 18.05.2020 issued under Disaster Management Act, 2005.

Therefore, I, Ghanshyam Thori, I.A.S. District Magistrate, Jalandhar as an authorised officer submit in writing under Section 195 Cr.P.C. that I as the higher authority of the District, due to busy in the government works, cannot appear in the cases before the Hon'ble Trial Court on every hearing. Therefore the Government pleader will be appeared before the Competent Court.”

7. Even though, the above bestowed empowerment upon the A.P.P. concerned, by the District Magistrate Jalandhar, did authorize the A.P.P. concerned, to institute a challan/complaint, after the completion of investigations into the FIR (supra), before the jurisdictionally empowered Court, and, also, though it made the police report, to become a complaint within the ambit of Section 195 (1) of the Cr.P.C., and, resultantly though the assumption of cognizance thereons, was valid.

8. But, be that at it may, and if so, since the provisions of clause (b) of Sub Section (2) of Section 468 of the Cr.P.C., provisions whereof are extracted hereinafter, barred the assumption of cognizance, or, assumption of jurisdiction upon the police challan/complaint, if it was filed, after more than a year elapsing since the commission of the petition FIR offences, especially when the maximum sentence of punishment imposable upon the petitioner herein, for the petition FIR offences, does not exceed one year. Resultantly, yet the jurisdictionally

empowered Magistrate rather assuming cognizance, and, also assuming jurisdiction upon the challan/complaint, though the same became well authorized to be instituted by the District Magistrate, hence on his behalf by the A.P.P. concerned, yet rather is not well founded, and, contrarily, it is completely vitiated.

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

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

(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.....”

9. 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. However, when the apposite period of limitation to be calculated from 25.05.2020, expired on 24.05.2021, and reiteratedly with the above delay remaining unexplained, besides the complaint/challan being filed, much belatedly therefrom on 21.09.2021, did completely disempower the CJM concerned, to either assume jurisdiction, or to take cognizance, upon the complaint filed before him, by the District Magistrate, Jalandhar.

10. It is only in the context of assumptions of jurisdictions, and, cognizance upon private complaints, or upon statutorily ordained

complaints being instituted by the aggrieved, before the jurisdictionally empowered Magistrate, that the mandate of sub Section (2) of Section 468 Cr.P.C., is applicable, but the above mandate may not be applicable, when a crime event is reported to a police station, and, results in an FIR being registered. The reason being, that if the crime event, is promptly reported to the police, and, results in the registration of an FIR, and, even if some delay has occurred in the relevant investigations, rather at the instance of the investigating officer concerned, and, may be also when the delayed investigations rather exceed the term of limitation prescribed in Section 468 Cr.P.C. (supra), hence for assumption(s) of jurisdiction, and, cognizance(s). Nonetheless, the delayed institution of a police report, as may arise from innumerable factors deterring the investigating officer to speedily complete the investigations, may not neither omnibusly nor can always threaten the assumption of cognizance, and, jurisdiction by the jurisdictionally empowered Magistrate, upon, the apposite police report.

11. Moreover, if the above delays in the investigations made into the FIR, are ultimately construed to be fall within the ambit of sub Section (2) of Section 468 of Cr.P.C., thereupon, the mandate of Section 173 of the Cr.P.C., provisions whereof are extracted hereinafter, would become threatened, as, therein rather except for the offences enumerated in clause 1(A), no limitation(s) of time hence for completion of investigations is prescribed, and, as such, the investigating officer concerned, is given latitude to complete the investigations, not within a certain statutorily ordained period of time, but to complete them without any 'unnecessary delay'.

“ 173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

[(1A) The investigation in relation to [an offence under section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months] from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;
- (b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the

proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).”

12. Moreover, when sub Section (8) of Section 173 Cr.P.C., also permits the making of further investigations, by the investigating officer concerned, resultantly, when recourse is made to Section (8) of Section 173 Cr.P.C, as such, Section 468 of Cr.P.C., would not become attracted, nor, any police report filed within the ambit of sub Section (8) of Section 173 Cr.P.C., subsequent to the holding of further investigations, and, even if filed beyond the period of limitation prescribed in Section 468 Cr.P.C., would never bar the jurisdictionally empowered Magistrate to either assume cognizance, or, assume jurisdictions qua the offences mentioned therein.

13. In consequence, there is merit in the petition, and, the same is allowed. FIR bearing No. 60 dated 25.05.2020 constituting therein offences, embodied under Section 188 IPC, under Section 51 of the Disaster Management Act, 2005, and, under Section 3 of the Epidemic Diseases Act, 1897, as, became registered at Police Station Division No. 4, Police Commissionerate, Jalandhar, District Jalandhar, and, also

all the consequential proceedings, hence arising therefrom, are quashed, but only qua the petitioner.

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

26.08.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

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