

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

118

CRM-M-47346-2022 (O&M)
Date of decision : 17.11.2022

Tani Sidhu

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Namit Gautam, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

CRM-39658-2022

For the reasons mentioned in the application, the same is
allowed and amended petition is taken on record.

CRM-M-47346-2022

The petitioner has filed the present petition under Section
482 of the Code of Criminal Procedure, 1973 for quashing of FIR
No.290 dated 19.07.2021 registered under Section 188 of the Indian
Penal Code, 1860 at Police Station Division No.5, District Police
Commissionerate, Ludhiana (**Annexure A-1**) and all consequential
proceedings arising therefrom.

The above-said FIR was registered on statement made by
one Gursewak Singh SI alleging that he has received information
through special informer that near Gurdev Nagar, Water Tank, there is
one Little Kingdom Play Way School. The petitioner, who is owner of
the said school, operating the school by neglecting the directions for

Covid-19 as the Deputy Commissioner, Ludhiana has not granted permission to open these kinds of schools.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present FIR ignoring the provisions in law and the order issued by the competent authority. The police has presented the challan under Section 173 Cr.P.C. dated 18.10.2021 which is totally illegal and unlawful and against Section 195 of the Cr.P.C. No offence under Section 188 of the IPC is made out against the petitioner as Section 195 Cr.P.C. clearly provides that no Court will take cognizance of any offence punishable under Section 172 to 188 except on a complaint in writing by the concerned public servant or of some other public servant to whom he is administratively subordinate. Therefore, the present FIR may be quashed. In support of his argument learned counsel for the petitioner has placed reliance upon the judgment passed by Hon'ble Supreme Court in ***Criminal Appeal Nos.127-130 of 2008 titled as 'C. Muniappan and others Vs. State of Tamil Nadu' decided on 30.08.2010***; judgment of this Court passed in ***CWP No.772 of 2007 titled as 'Jiwan Kumar Vs. State of Punjab and others' decided on 18.03.2008***; ***CRM-M-51595-2021 titled as 'Pawan Giri and others Vs. State of Haryana' decided on 07.02.2022***; ***CRM-M-19407-2022 titled as 'Sidak Singh Sandhu Vs. U.T. Chandigarh and another' decided on 27.07.2022*** and judgment of Madhya Pradesh High Court passed in ***Writ Appeal No.888 of 2013 in Writ Petition No.7984 of 2011 titled as 'State of Madhya Pradesh and another Vs. Jyotiraditya Scindia' decided on 07.02.2014***

On the other hand, learned State counsel has opposed the

present petition and submits that cognizable offence is duly made out and that the FIR was registered on a complaint made by the Police Officer.

I have heard learned counsel for the parties and gone through the paper-book.

Before proceeding further, the relevant statutory provisions of Section 188 of the IPC is extracted as under:-

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

Further, the relevant statutory provisions Section 195 of

the Cr.P.C. are extracted as under:-

“195. Prosecution for contempt of lawful authority or 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

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xx xx xx xx xx

Except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”

11. Section 195 Cr.P.C. imposes certain restrictions on the authority of the public servant to prosecute under the relevant sections. The Courts are prohibited from taking cognizance of the offences mentioned therein unless and until the public servant or their superior makes the complaint. Section 195 opens with the word “No Court” and thus imposes a bar against any Court to take cognizance of the offences contemplated thereunder except in accordance with the procedure prescribed therein. “Complaint” has been defined under Section 2 (d) of the Cr.P.C. and has to be filed in accordance with the procedure prescribed thereunder. The order of prohibition does not refer to any restrictions against the purchasers and consumers on the restrictions against opening of the shops. The subordinate officials are only required to ensure enforcement of the said order and it does not make them an authority whoses' order has been disobeyed. The violation, if any, shall remain as that of the authority propagating the order. Hon'ble

Supreme Court in its judgment passed in ***Jagtar Singh Vs. Union Territory, Chandigarh : 1996(1) RCR 669*** observed 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."

It has also been held by Hon'ble Supreme Court in its judgment passed in ***P.D. Lakhani and Others versus State of Punjab : (2008) 5 SCC 150*** that the functions of the Public Servant under Section 195 cannot be delegated. The observations as recorded in Para 15 by the Hon'ble Supreme Court in its above said judgment are extracted as under:

"15. The fact that the search was made pursuant to the directions issued by the Senior Superintendent of Police, Jalandhar is not in dispute. Section 195 contains a bar on

the Magistrate to take cognizance of any offence. When a complaint is not made by the appropriate public servant, the Court will have no jurisdiction in respect thereof. Any trial held pursuant thereto would be wholly without jurisdiction. In a case of this nature, representation, if any, for all intent and purport was made before the Senior Superintendent of Police and not before the Station House Officer. No complaint, therefore, could be lodged before the learned Magistrate by the Station House Officer. Even assuming that the same was done under the directions of the Senior Superintendent of Police, Jalandhar, Section 195, in no uncertain terms, directs filing of an appropriate complaint petition only by the public servant concerned or his superior officer. It, therefore, cannot be done by an inferior officer. It does not provide for delegation of the function of the public servant concerned.”

In view of above, it is clear that the proceedings against the petitioner under Section 188 of the IPC have been initiated on the basis of the FIR 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 FIR and the substantial proceedings arising therefrom against the petitioner is not permitted by the Cr.P.C. and thus, cannot be allowed to be sustained.

Resultantly, the present petition is allowed and the above-said FIR No.290 dated 19.07.2021 (**Annexure A-1**) and all consequential proceedings arising therefrom against the petitioner is quashed.

17.11.2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No