

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

201

**CRM-M-51595-2021 (O&M)
Date of decision: 07.02.2022**

PAWAN GIRI AND OTHERS

.....Petitioners

VERSUS

STATE OF HARYANA

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. G.B.S. Dhillon, Advocate and
Mr. Chanchal K. Singla, Advocate
for the petitioners.

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

VINOD S. BHARDWAJ, J. (Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

The instant petition has been filed by the petitioners under Section 482 Cr.P.C. seeking quashing of FIR No. 0027 dated 11.04.2020 under Section 188 and 269 IPC registered at Police Station Mansa Devi Complex, District Panchkula along with Challan dated 08.07.2020 (Annexure P-7) and all the consequential proceedings arising therefrom.

2. Upon notice to the respondent, reply by way of affidavit of the Assistant Commissioner of Police, Panchkula on behalf of the State of Haryana has already been filed.

3. I have heard learned counsel appearing on behalf of the parties and with their assistance have gone through record.

4. Learned counsel for the petitioners submits that the petitioners had been arraigned as accused in the said FIR ignoring the

provisions in law and the order issued by the competent authority. It is stated that as per the FIR the offence is stated to have been committed around 12:00 hrs to 12:30 hrs and the information had been received at the Police Station at 13:30 hrs. Learned counsel points out that as per office order dated 01.04.2020 (in violation whereof the FIR has allegedly been registered), issued by the District Magistrate under Section 144 Cr.P.C., the opening of shops after 6:30 P.M. was prohibited. The same was hence not applicable to the petitioner. The son of petitioner had to go to the Chemist's Shop to purchase medicines pertaining to diabetes for his mother and the invoice has been appended as Annexure P-2. It is argued that the essential medicines were purchased within the permissible time span and had thereby not committed any violation of the order issued under Section 144 of the Code of Criminal Procedure, dated 01.04.2020.

5. Learned counsel for the petitioners has further submitted that the registration of the FIR is bad as the essential ingredients of offences under Section 188 and 269 IPC are not made out from perusal of the FIR as well as the final report and the proceedings have not been filed as per the procedure prescribed in law. Referring to the provision of code of Criminal Procedure and the final report under Section 173 Cr.P.C., learned counsel has pointed out that there is no document or investigation to substantiate that the petitioner was suffering from any communicable disease and as such, the petitioner could not have spread the infection of any disease that may be labelled as dangerous to life. Consequently, offence under Section 269 IPC is not made out.

6. A further reference is made to Section 195 of the Cr.P.C. to

argue that cognizance of any offence under Section 188 cannot be taken except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. A reference is also made to Annexures P-5 and P-6 to contend that the same FIR against other co-accused stands quashed by this Court vide its order 25.11.2021.

7. Learned State counsel on the other hand has placed reliance upon the final report under Section 173 Cr.P.C. to contend that cognizable offence is duly made out and that the FIR was registered on a complaint made by the Police Officer as the petitioners were found roaming without masks and have given no satisfactory explanation for violating the directions. Learned State counsel has not disputed that vide order dated 25.11.2021 in Criminal Miscellaneous No. 43696 of 2021 titled as '*Sonu Giri versus State of Haryana*', the FIR in question already stands quashed.

8. Before proceeding further, the relevant statutory provisions of Section 188 and 269 IPC are 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.

269. Negligent act likely to spread infection of disease dangerous to life.-Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

9. Further, the relevant statutory provisions Section 195 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

xx xx xx xx xx
xx xx xx xx xx
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.

10. A perusal of Section 269 IPC shows that in order to attract the same, the act of an accused must be one which is likely to spread infection of any disease dangerous to life. A perusal of the report filed by respondent under Section 173 Cr.P.C. does not indicate any *prima-facie* evidence collected by the Police as to whether the petitioner or the other members of the family were suffering from any infectious disease or would have caused spread of any infectious disease. In the absence thereof, it cannot be assumed that the petitioners were either the carriers of infection or would have caused spread thereof. Apart therefrom, the report also does not indicate the exact guideline purportedly alleged to have been violated. In the absence of any such specific guidelines which is alleged to have been violated, there is no presumption that the act of the petitioners was unlawful. Further, perusal of the notification dated 01.04.2020 shows that the said notification was in the nature of a prohibition imposed upon the shops selling medicines and was not against other person. Hence, the action of the petitioners in seeking procurement of essential medicines during the permissible hours of operation cannot be held to be unlawful. In the absence of the respondents to refer to any order, the disobedience whereof is sought to be alleged against the petitioners, it cannot be perceived that the petitioners have committed an offence under Section 269 IPC.

11. It is further pertinent to observe that 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. It has been held by the Supreme Court in the matter of “***P.D. Lakhani and Others versus State of Punjab' reported as (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 leaned 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.”

12. Needless to mention that registration of case under Section 188 IPC is merely intended to set the criminal law in motion. Power of police to investigate an offence is not controlled or regulated by Section 195 Cr.P.C. The aforesaid statutory provision however does restrict the manner in which cognizance of the offence is to be taken by the Court. It has been held by the Hon'ble Supreme Court in the matter of '**State of Punjab versus Raj Singh and another' (1998) 2 SCC 391** as under:

“We are unable to sustain the impugned order of the High Court quashing the F.I.R. lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 I.P.C. by them in course of the proceeding of a civil suit, on the ground that Section 195 (1) (b) (ii) Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr. P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true

that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195 (1) (b) Cr. P. C. , but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr. P.C..... ”

13. It is undisputed that the complaint in question was not filed by the authority that had issued the order or by an authority to which such authority was subordinate.

14. It has also been held by the Hon'ble Supreme Court that in the matter of “*Basir-ul-haq versus State of Punjab*” reported as AIR 1953 SC 293, the prosecuting agency cannot be permitted to evade the application of Section 195 by resorting to devices or camouflages. The test as to whether there is any evasion or not is whether the facts disclose primarily and essentially an offence for which a complaint of the public servant is required. The prosecuting agency thus cannot take aid of Section 269 IPC to justify filing of the report under Section 173 Cr.P.C. especially when the essential ingredients of Section 269 IPC are not made out from the final report.

15. Hon'ble Supreme Court has laid down various parameters for quashing of the proceedings in the matter of '***State of Haryana and others versus Bhajan Lal and others***', reported as ***1992 Supp (1) SCC 335***, which such parameters hold good even today. The same are extracted as under:

“102. In the backdrop of the interpretation of the

various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint

are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

16. A perusal of the FIR and the final report fail to make out the essential ingredients of offence under Section 269 IPC and the case would fall in category (1) and (3).

17. It is further undisputed that the petition of the co-accused already stands allowed and the FIR has been quashed by this Court vide order dated 25.11.2021 passed in *Criminal Miscellaneous No.43696-2021*. The said order is extracted as under:-

Ld. Counsel appearing for the State submits in all fairness that FIR under Section 188 of the IPC could not have been drawn up accepting the Complaint of the concerned Officer, who had issued/promulgated the order for compulsory wearing of mask at the relevant time.

2. Submits further on instructions of H.C. Dharamvir Singh that it has been verified that the Petitioner at the relevant time was not suffering from any kind of communicable disease on account of which there

was no occasion for him to expose any one else to the danger of contracting such disease on account of which, the offence under Section 269 of the IPC is also not made out.

3. In view of the aforesaid circumstances, this appears to be a fit case to quash the FIR No.0027 dated 11th April, 2020 registered under Sections 188, 269 of the IPC at Police Station Mansa Devi Complex, District Panchkula, which is accordingly quashed and Petition disposed off.

18. The case of the petitioners herein cannot be said to be on any other different footing. There is no material available on record to distinguish the case of the petitioners from that of co-accused Sonu Giri. It is also evident from perusal of Annexure P-4 bearing memo No. 05.02.2021-2H(C) dated 17.02.2021 that the State itself is in the process of carrying out the review of the cases registered for violation of guidelines issued during the course of dealing with situation of Pandemic of Covid-19.

19. In view of the above, the instant petition is allowed and FIR No. 0027 dated 11.04.2020 under Section 188 and 269 IPC registered at Police Station Mansa Devi Complex, District Panchkula along with charge-sheet dated 08.07.2020 (Annexure P-7) and all the consequential proceedings arising therefrom is accordingly quashed.

The Criminal Miscellaneous petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 07, 2022

Vishal sharma

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