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NEUTRAL CITATION NO: 2022/DHC/002978



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 14.07.2022
Pronounced on : 21.07.2022

+ **CRL.M.C. 2039/2020 & CRL.M.A. 14589/2020 (stay)**

CHANDER BHUSHAN Petitioner
Through: Shri Yoginder Handoo, Shri Ashwin
Kataria & Shri Garvit Solanki, Advocates.
Versus

STATE, NCT OF DELHI Respondent
Through: Shri Amit Chadha, APP for the State.

+ **CRL.M.C. 1622/2014**

CHANDER BHUSHAN Petitioner
Through: Shri Yoginder Handoo, Shri Ashwin
Kataria & Shri Garvit Solanki, Advocates.
Versus

STATE Respondent
Through: Shri Amit Chadha, APP for the State.

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J.:

1. These two petitions are at the instance of the accused arising out of common incident, therefore, they were taken up for hearing together and are being decided by this common order. Crl.M.C No. 1622/14 is for quashment of FIR No.354/13 dated 01.06.2013, registered under Section 188 IPC at PS Mehrauli and for setting aside the order of summoning dated 05.10.2013, passed by the learned MM (South)-07, Saket Court, New Delhi. In this case, this court vide order dated 22.12.2014, directed for exemption of personal appearance of



the petitioner before the court of learned MM. In Crl.M.C. No.2039/20, the petitioner is seeking quashment of order dated 11.09.2020 passed by the learned ACMM, Saket Court, New Delhi, whereby, the learned ACMM has rejected the prayer for discharge of the petitioner. In this case, vide order dated 21.10.2020 this court passed an interim order staying the further proceedings before the trial court.

2. For the sake of convenience, facts from Crl.M.C. No.2039/20 are being referred. The facts of the case show that in exercise of powers conferred by Section 144 of Cr.P.C. read with Government of India, Ministry of Home Affairs, New Delhi, Notification dated 26.11.2008, the Deputy Commissioner of Police South District, New Delhi vide order dated 23.04.2013 ordered that no landlord / owner / person of any house / property falling under the jurisdiction of the area of police station specified in the schedule appended thereto, shall let / sublet / rent out any accommodation to any person unless and until he has furnished the particulars of the tenant to the Station House Officer of the police station concerned. It was also stated therein that all persons who intended to take accommodation on rent shall inform in writing in that regard to the Station House Officer concerned in whose jurisdiction the premises fall.

3. In paragraph 4 of the said order dated 23.04.2013, it was stated that the same would be effective with effect from 25/04/2013 and shall remain in force for a period of 60 days i.e. up to 23.06.2013 (both days inclusive) unless withdrawn earlier. It was also ordered that any person contravening the said order shall be punished under Section 188 of IPC.

4. On 01.06.2013, an FIR came to be registered against the petitioner by Head Constable Ashok Kumar for an offence punishable under Section 188 of IPC on a written complaint stating therein that on patrolling of the area he found that House No.C-4 Paryavaran Complex, New Delhi, 3rd floor thereto was occupied by the tenant namely, Dharma Teja Pulimi S/o Venkat Raman Prasad. The same premises was owned by the petitioner who, on interaction, told that on

account of he being busy with his personal and business work, could not
the concerned police station.

NEUTRAL CITATION NO: 2022/DHC/002978



5. On 03.07.2013, the charge sheet was filed before the competent court. On 15.09.2013 a complaint under Section 195 (1) (a) of Cr.P.C was also filed by Assistant Commissioner of Police Sub-Division, Mehrauli, New Delhi before the said court, for an offence punishable under Section 188 IPC. On 05.10.2013, learned MM (South)-07 Saket Court took cognizance of the offence punishable under Section 188 IPC and issued summons to the petitioner.

6. Learned counsel, Shri Yoginder Handoo, assisted by Shri Garvit Solanki, appearing for the petitioner submits that no FIR could have been registered against the petitioner unless there is a complaint in writing by the competent public servant. He further submits that in the instant case, initially an FIR was registered and chargesheet was filed without any authority and to cover up the legal deficiencies, a purported complaint has been filed under Section 195 (1) (a) of Cr.P.C. He also submits that even assuming that after filing of an FIR, a complaint can also be filed, but in that case, the complaint filed by the incompetent authority is not maintainable. According to him, the instant complaint is filed by the Assistant Commissioner of Police Sub-division Mehrauli, New Delhi, whereas, no officer below the rank of Deputy Commissioner of Police could have filed the complaint as the directions, which are stated to have been violated, are issued by Deputy Commissioner of Police South-District, New Delhi. He lastly submits that in any case, in view of the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana & Ors. v. Bhajan Lal and Ors.*¹ no offence is made out even if the entire charges are accepted to be true. He has taken this court to order dated 23.04.2013 to submit that the same was issued on 23.04.2013 and was made effective after 30 days i.e. from 25.04.2013 and in the instant case admittedly, as per the prosecution case itself, the rent agreement in question was executed on

¹ (1992) Supp (1) SCC 335



01.02.2013 (Page 78) i.e. prior to the date of issuance of the notification, places reliance on the decision of the Hon'ble Supreme Court in the matter of *C. Muniyappa & Ors. Vs. State of Tamil Nadu*², *State of U.P. Vs. Mata Bhikh & Ors*³ and the decision of this court in the case of *Pankaj Prakash Vs. State*,⁴ *Mohan Kukreja Vs. State Government of NCT Delhi and Ors.*⁵ and decision of the High Court at Madras in the case of *Jeevandhan & Ors Vs. State & Ors.*⁶

7. Shri Amit Chadha, learned Additional Public Prosecutor, opposed the petition and he submits that this court should not go into the factual aspects of the matter as the same is the subject matter of trial. According to him, the police is empowered to take recourse to both the modes i.e. to lodge an FIR and invoke the procedure prescribed under Section 154 of Cr.P.C. and also to file a complaint for the said offence under Section 195 (1) (a) of Cr.P.C. According to him, in any case, the complaint is filed by the competent authority. Therefore, neither the FIR nor the complaint requires to be interfered into. He places reliance on a decision of the Hon'ble Supreme Court in the matter of *State of Punjab Vs. Raj Singh*⁷, *M Narayan Das Vs. State of Karnataka*⁸, and the decision of Gujarat High Court in the case of *Nikhilbhai Kesubhai Patel Vs. State of Gujarat*.⁹

8. I have heard the learned counsel appearing for the parties and perused the record. The legal position is now well settled that when a prosecution, at the initial stage is sought to be quashed, the principle to be applied by the court is whether uncontroverted allegations, as made, *prima facie* establish the offence. It is also to be kept in mind that if according to the opinion of the court, no case for the offence alleged is made out, there would be no purpose to continue the prosecution.

² (2010) 9 SCC 567

³ (1994) 4 SCC 95

⁴ (2015) SCC OnLine Del 11865

⁵ (2019) SCC OnLine Del 6398

⁶ (2018) SCC OnLine Mad 13698

⁷ (1998) 2 SCC 391

⁸ (2003) 11 SCC 251

⁹ R/Cr.L.M.A 8451/2018



9. In the instant case although, various legal submissions have been made by learned counsel appearing for the petitioner, but this court finds it appropriate to first examine as to whether even on the basis of uncontroverted facts, an offence under Section 188 of IPC is made out or not.

10. In the instant case, disobedience of the order dated 23.04.2013 is alleged. The said order is made applicable w.e.f. 25.04.2013 for a period of 60 days i.e. up to 23.06.2013 (both days inclusive). The order in question has been issued in exercise of the power vested with the said authority by virtue of Section 144 of Cr.P.C. and the Government of India Notification dated 26.11.2008. A perusal of Section 144 of Cr.P.C. also suggests that the same empowers the authority to issue immediate preventive order if in the opinion of such authority the situation so demands. Any preventive order will obviously be for future.

11. The order in question dated 23.04.2013 is being reproduced as under:

"1. Whereas reports have been received that due to the situation prevailing in the areas of Police Stations specified in the schedule appended to this office, it is apprehended that terrorist/anti-social elements may seek hideouts in the residential areas of the said Police Stations and there is every likelihood of breach of peace and disturbance of public tranquillity and also there is grave danger to human life and safety and injury to public property on that account.

2. And whereas it is necessary that some checks should be put on landlords/tenants so that terrorist/anti-social elements in the guise of tenants may not cause explosion riots shoot outs affray, etc. and that immediate actions is necessary for the prevention of the same.

3. Now, therefore, I, Chhaya Sharma, Deputy Commissioner of Police, South District, New Delhi in exercise of the powers conferred upon me by Section 144 Criminal Procedure Code, 1973 read with Govt. of India, Ministry of Home Affairs New Delhi's Notification No. U-11036/1/2008 UTL dated 26.11.2008, do hereby order that no landlord/owner/person of any house/property which falls under the jurisdiction of area of Police Stations specified in the schedule appended to this order, shall let/sublet/rent out any accommodation to any



person unless and until he has furnished the particulars of the said tenant (s) to the Station House Officer of the Police Station concerned. All persons who intend to take accommodation on rent shall inform in writing in this regard to the Station House Officer concerned in whose jurisdiction the premises fall. The persons dealing in property business shall also inform in writing to the Station House Officer concerned in whose jurisdiction the premises fall about the particulars of the said tenants.

4. The order shall come into force with effect from 25.04.2013 and shall remain in force for a period of 60 days i.e. upto 23.06.2013 (both days inclusive) unless withdrawn earlier.

5. Any person contravening this order shall be punishable under Section 188 of the Indian Penal Code.

6. As the notice cannot be served individually on all concerned, the order is hereby passed ex-parte. It shall be published for the information of public through Press and by affixing copies on the Notice Boards of the office of all District AddlCsP, DCsP, Addl. DCsP, ACsP, Tehsil Offices, all Police Stations concerned and the offices of the NDMC and MCD.”

12. The complaint filed under Section 195 of Cr.P.C. reads as under:

“Case FIR No.354/13 dated 01/06/13 u/s 188 IPC Police Station Mehrauli, New Delhi.

State through: HC Ashok Kumar 3272/SD

State versus: 1,Chander Bhushan S/o Ram Narayan R/o C-4 Villa Pravaraqn Complex Delhi

Subject: Complaint under section 195 Cr.P.C.

Sir,

Briefly the facts of the case are that on 01/06/13 ,/HC Ashok Kumar No.3272/SD was on duty for checking/verification of tenants. During checking he reached the house of Shri Chander Bhushan S/o Ram Narayan R/o C-4 Villa Pravaraqn Complex Delhi and found that he has given his house on rent to Shri Dharamteja' Pulimi S/o Shri Venkata Raman Prashad r/o H.No C-4 Villa Pravaraqn Complex Neither the landlord nor the tenant has given any intimation to the police authorities which is in contravention of the



notification No. 21441-21540/SD(X) dated 23.04.2013. Hence, case FIR No.354//13 dated 01/06/13 u/s 188 IPC was registered against both of them. They were arrested and released by police on bail. Challan **has been prepared on 08/07/13**. It is mandatory to file a formal complaint u/s 195 Cr.P.C for the offences u/s 172 to 188 IPC (Both inclusive).

It is, therefore, requested that the cognizance of the case may be taken in accordance with the provision a (I) of Sub-Section (1) of section 195 Cr.P.C and the undersigned be exempted from attending the court on each day of hearing of the case as it will not be possible for the undersigned to attend the court due to exigencies of service and the concerned PP may be allowed to represent the undersigned."

13. The chargesheet filed before the concerned Magistrate itself records that the tenant of the petitioner Sh. Dharma Teja Pulimi clearly stated that he was occupying the said house as a tenant since February, 2013. He produced the concerned rent agreement also. Taking into consideration the aforesaid materials available on record, this court is of the opinion that offence under Section 188 of IPC is not made out even on uncontroverted facts. The order dated 23.04.2013 is not made applicable with retrospective effect. The same has been specifically made operational w.e.f. 25.04.2013 and the rent agreement in the instant case is dated 01.02.2013 (Page 78). The aforesaid position is established on the basis of the chargesheet filed by the respondent itself and hence, under the facts of the present case, there is no necessity to go into the other legal issues raised by the parties. It is found that there is absolutely no case made out against the petitioner as the complaint does not disclose the essential ingredients of Section 188 of IPC, i.e., disobedience of any direction issued by a public servant and such disobedience must cause or tend to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed.

14. A perusal of the FIR, complaint and the chargesheet does not disclose any existing direction on the date of execution of rent agreement which can be said to have been disobeyed by the petitioner. As has been discussed above, the



direction in question is dated 23.04.2013 and according to prosecution its
petitioner let out his accommodation on rent in the month of February 2013. In
view of the aforesaid on this ground alone, the impugned FIR and the complaint
deserve to be quashed.

15. In view of the aforesaid discussion, under the facts of the present case,
this court passes the following order:

- (i) FIR No.354/13 under Section 188 of IPC registered at Police Station Mehrauli, District South, is hereby quashed. All actions emanating therefrom also stands quashed.
- (ii) Order dated 05.10.2013, passed by learned MM, Saket Court, New Delhi, taking cognizance and issuing summons to the petitioner, is hereby quashed. Accordingly, the complaint dated 15.09.2013 filed by the respondent stands dismissed. It is ordered accordingly.
- (iii) Crl.M.C. No.2039/2020 and Crl. M.C. No.1622/2014 stand allowed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JULY 21, 2022

MJ