

CRM-M-3324-2022
CRM-M-30832-2022

Neutral Citation No. 2023:PHHC:070275

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3324-2022
Date of Decision: May 11, 2023

Mr. Rahul Awasthi ...Petitioner

Versus

State of Haryana and another ...Respondents

CRM-M-30832-2022

Mr. Mohit Bhalla ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Amit Jhanji, Sr. Advocate with
Ms. Zaheen Kaur, Mr. Tishampati Sen and
Mr. Kshitij Sharma, Advocates for the petitioners.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

In both the petitions titled above, prayer is made to quash FIR No.146 dated 08.04.2020 (Annexure P-1), registered under Sections 188, 269/34 of IPC and Section 51 of the National Disaster Management Act, 2005 (hereinafter referred as 'NDM Act'), at Police Station Badshahpur, District Gurugram, Haryana, along with consequential proceedings arising therefrom including final report dated 11.07.2020 (Annexure P-2). Further prayer is made to quash the complaint dated 29.07.2020 (Annexure P-3) filed by the District Magistrate along with consequential proceedings.

2. Petitioner Rahul Awasthi was employed as Vice President (Technical); and petitioner Mohit Bhalla was a manager and part of Human Capital Department, with Lenskart Solution Private Limited at the relevant time. In the wake of Covid-19 pandemic, the Government of India had announced nationwide lock down on 23.03.2020. The company Lenskart Solution private Limited had been granted permission to run its workshop located at Begampur Khataula, Gurugram, Haryana, vide order dated 08.04.2020 of Additional Labour Commissioner, Gurugram.

3. However, a civil defence team inspected the premises of the company on 08.04.2020 and found 80 workmen of the company working in the premises. Mattress arranged for their stay were lying near each other and bio-metric machines were being used for recording the attendance of the company staff. Based on these facts, a complaint was made by Naib Tehsildar before the S.H.O. Badshahpur, Police Station resulting into registration of the FIR in question, naming both the petitioners and one Amit Chaudhary as accused. On 10.04.2020, an order was passed by the District Magistrate-cum-District Authority so as to effectively implement the lock down. After completing the investigation of the case, police submitted final report dated 11.07.2020 under Section 173 Cr.P.C. to prosecute both the petitioners under Sections 188, 269/34 IPC. As the order dated 08.04.2020 of Additional Labour Commissioner, Gurugram was produced during the investigation, so Section 51 of the NDM Act was deleted. Involvement of Mr. Amit Chaudhary, who had produced the letter regarding appointment of Factory Manager, was also not found. Based on the final report dated 11.07.2020 filed by the police,

the District Magistrate-cum-District Authority filed complaint bearing No.CHI-1792/2020 (Annexure P-3) seeking prosecution of both the petitioners under Section 188 IPC read with Section 51 of the NDM Act. Learned Judicial Magistrate 1st Class, Gurugram, vide order dated 29.07.2020 (Annexure P-5) took cognizance of the offences and adjourned the matter for consideration on charge.

4. (i) Challenging the above-said FIR, filing of the final report under Section 173 Cr.P.C. and a consequent complaint filed by the District Magistrate and the order dated 29.07.2020 of learned Judicial Magistrate 1st Class, Gurugram of taking cognizance, it is contended by learned counsel for both the petitioners that essential ingredients for the offence under Section 188 of the IPC are neither made out in the FIR nor in the final report, as the FIR must indicate that accused had the knowledge of the order, which has been allegedly disobeyed.

(ii) Further, though the complaint filed by the District Magistrate is purportedly based upon the impugned FIR and the final report, but the same is quite incoherent and with different allegations. As per complaint filed by the District Magistrate, petitioners were allegedly found walking around their home/shelter on 08.04.2020 for which, they could not provide any proper explanation and thus, they allegedly committed offence under Section 188 IPC and 51 of NDM Act. It is pointed out that as per this complaint of the District Magistrate, it is the order dated 10.04.2020, which had been allegedly disobeyed by the petitioners on 08.04.2020. Contention is that order dated 10.04.2020 could not in any eventuality be violated on 08.04.2020.

(iii) It is further contended that cognizance of offence under Section 188 IPC and that of Section 51 of NDM Act is contrary to the provisions of Section 195(1)(a) Cr.P.C. and 60 of NDM Act respectively. It is pointed out that though the complaint by the District Magistrate was filed on the basis of police report, but learned Judicial Magistrate 1st Class, Gurugram did not take cognizance of the complaint of the District Magistrate and rather, took cognizance of the challan submitted by the police. It is urged that provisions of Section 195 Cr.P.C. are mandatory and non-compliance thereof would vitiate the prosecution and the consequent proceedings. The FIR cannot be registered for the offence under Section 188 IPC.

(iv) It is further contended that essential ingredients to constitute an offence under Section 269 of IPC are neither made out in the FIR nor in the final report, as it is not the case of the respondent-State that any of the petitioners were suffering with COVID on the date of alleged occurrence. The order dated 29.07.2020 (Annexure P-5) is alleged to have been passed by the Judicial Magistrate 1st Class, Gurugram mechanically in violation of the legal position explained by Hon'ble Supreme Court in *"Pepsi Food Ltd. and Anr. v. Special Judicial Magistrate and Ors"* 1998 CriL J1.

5. In the reply filed by the respondents by way of affidavit of Shri Sanjeev Kumar, Assistant Commissioner of Police, Sadar Gurugram on behalf of respondent No.1, the impugned action has been defended by pleading that the two petitioners being Plant Head and HR Manager of the company were found to be responsible for not following the protocol

of Government and rather endangering the life of workers by making arrangements for them in a small hall on 08.04.2020, blatantly violating the instructions of the Government. It is submitted further that the two petitioners also violated the orders dated 23.03.2020 issued by the Additional Chief Secretary to Government of Haryana, Health Department and thereby, committed offence under Section 188 IPC read with Section 34 of IPC. Still further, it is submitted that there appears to be clerical/typing mistake in the complaint filed by the District Magistrate, inasmuch as the facts pleaded in the FIR, are the real facts as the petitioners violated the instructions of the Government. It is submitted that due to inadvertent mistake in the complaint, the proceedings are not liable to be quashed.

6. I have considered submissions of both the sides and have perused the record.

7. As it appears from the various documents as made available on record, the respondent-State has changed its stand qua the accusations against the petitioners, time and again. In the FIR in question, allegations are that 80 persons were found working in the premises of the company and that by violating the social distancing norms, they slept close to each other and further that bio-metric machine was being used to mark the presence of the staff. Based on these allegations, the report under Section 173 Cr.P.C. (Annexure P-2) was prepared.

8. However, in the complaint (Annexure P-3), which is purportedly filed in the Court under the provisions of Section 195 Cr.P.C. read with Section 60 of the NDM Act based upon the final report

submitted by the police, the allegations are as under: -

“2. The brief facts that have led to filing of the present complaint are that on account of global pandemic Covid-19 Virus, when country was facing unprecedented difficulties, on dated 24.03.2020, to obviate such difficulties, Hon'ble Prime Minister of India has effectuated a complete lock-down across the country for 21 days.

3. That on the same day, Ministry of Home Affairs vide order no. 40/03/2020 through separate Annexure has also issued certain guidelines coupled with directions for taking coercive measures against the violators. Copy of guidelines issued by the Ministry is annexed herewith as Annexure C-1.

4. In continuation to the above, I, being the District Magistrate and Chairperson of the District Authority under Disaster Management Act, 2005 has also passed separate order dated 10.04.2020 in order to effectively implement the Lock-down in the areas, falling under District Gurugram. Copy of order is annexed herewith as Annexure C-2.

*5. It has been brought in my knowledge that in spite of issuance of aforesaid order, on dated 08.04.2020 **accused Rahul Awasthi, Mohit Bhalla with an attempt to disobey the directions of the order, walking outside from his home** and in this manner, he has refused to comply the directions given by the complainant and disobeyed the order.*

*6. It has been further brought in to my knowledge that when accused was walking outside from his home/shelter, he was stopped by the police walking namely Sh. Sher Singh, ASI who at that time was deputed at location of the check post. On enquiry, **accused had failed to give any proper explanation about walking outside from his home/shelter.** When said officer satisfied that accused is walking outside his home/shelter with an attempt to violate the order passed by the public officer and he has not*

complied with the directions given by the complainant, moreover concerned officer has also verified that accused is also not falling under the exempted category of persons, who were exempted by the Ministry of Home Affairs. Then a written complaint dated 08.04.2020) has been sent against accused for registration of the FIR and he was apprehended by the said police officer. As a result, FIR No. 146, u/s 188,134,264 IPC at P.S. Badshahpur has been got registered against the accused. Copy of written complaint and FIR is annexed herewith as Annexure C-3 and C-4.

7. Thereafter, investigation of the case has been carried out by Sh. ASI Sher Singh after completion of investigation, final report has been prepared which has been perused by me. Copy of final report is annexed herewith as Annexure C-5.”

9. Thus, in the complaint filed by the District Magistrate, allegations are to the effect that accused-petitioners had disobeyed the order dated 10.04.2020 of the District Magistrate and disobedience was allegedly made on 08.04.2020, i.e., prior to passing of the order.

10. Taking third stand in the reply submitted before this Court, it is alleged that contents of the complaint filed by the District Magistrate were based upon clerical/tying mistake that in fact the petitioners had not followed the protocol of the Government and had endangered the life of workers by making arrangements in small room and thus, they had violated the order dated 23.03.2020 issued by the Additional Chief Secretary to the Government of Haryana, Health Department and thus, committed offence under Section 188 IPC read with Section 34 IPC.

11. Section 188 of the Indian Penal Code, reads 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 persons 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 tends 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.”

12. Thus, the necessary ingredients of an offence under Section 188 IPC are: -

- (a) there must be an order promulgated by a public servant,
- (b) such public servant must be lawfully empowered to promulgate such order,
- (c) Such order should direct the accused to abstain from an act or to take certain order with certain property in his possession or under his management,
- (d) Accused disobeys the order knowingly,
- (e) Such obedience must cause or tend to cause -
 - (i) obstruction, annoyance or injury or risk of obstruction,

annoyance or injury to any person lawfully employed; or

(ii) danger to human life, health or safety; or

(iii) causes or tend to cause riot or affray.

13. However, no Court can take cognizance of an offence under Section 188 IPC except on a written complaint made by the concerned public servant, whose order has been disobeyed. In this regard, Section 195(1)(a) Cr.P.C. is relevant to note, which is as under: -

“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.”

14. Thus, Court can take cognizance of an offence punishable under Section 188 IPC only on the complaint either made by the public servant concerned or of some other public servant to whom he is administratively subordinate.

15. The contention of learned counsel for both the petitioners to the effect that FIR itself could not have been lodged for commission of an offence under Section 188 IPC, has no merit. Offence under Section 188 IPC is a cognizable offence and so, police has the power to lodge an FIR for committing the offence under Section 188 IPC, though it is another matter that cognizance by the Court, as per Section 195 Cr.P.C., can be

taken only on the basis of complaint to be made by the concerned public servant.

16. Reliance in this regard can be placed upon a Division Bench Authority of this High Court rendered in ***“Hardeep Singh v. State of Haryana”*** (CRM-M-4211-2014, decided on 04.12.2014). In that case, offence under the provisions of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, cognizable in nature, had been committed. Section 28 of the said PNDT Act provides that no Court can take cognizance of an offence under the Act, except on the complaint made by the appropriate authority concerned. With these background facts, following the legal points were considered by the Hon'ble Division Bench: -

(1) Whether FIR for the offences committed under this Act can be registered on the complaint of Appropriate Authority and can be investigated by the Police?

(2) Whether the report under Section 173 CrPC along with the complaint of an Appropriate Authority can be filed to the Court?

(3) Whether no FIR can be lodged nor the offences can be investigated by the Police and only complaint by the Appropriate Authority directly to the Court lies?

After consideration, the Division Bench answered the above said law points as under: -

In the circumstances, the questions as formulated in the reference are answered in the following manner, that: -

(1) FIR for the offence committed under the Act can be registered on the complaint of the Appropriate Authority and can be investigated by the Police; however, cognizance of the same can be taken by the Court on the basis of a complaint made by one of the persons mentioned in Section 28 of the Act.

(2) A report under Section 173 CrPC along with the complaint of an appropriate authority can be filed in the Court. However, cognizance would be taken only on the complaint that has been filed in accordance with Section 28 of the Act.

(3) FIR can be lodged and offences can be investigated by the Police but cognizance only of the complaint is to be taken by the Court.

17. On the same analogy, the offence under Section 188 IPC being cognizable, so it is held that FIR for commission of said offence can be lodged by the police, though taking cognizance of an offence punishable under the said Section 188 IPC is barred by the Court except on the complaint in writing made by the concerned public servant. A report under Section 173 Cr.P.C. along with the complaint of the concerned public servant can, thus, be filed in the Court and based thereon, cognizance can be taken by the Court on the complaint that has been filed, in accordance with Section 195 Cr.P.C.

18. In view of the above discussion, it is held that FIR in question and filing of the report under Section 173 Cr.P.C. cannot be quashed simply on the ground that complaint by the District Magistrate has been filed based on that report..

19. However, at the same time, as has been noticed above that even though complaint in accordance with Section 195 Cr.P.C. can be filed by a public servant concerned (District Magistrate in this case) for commission of offence under Section 188 IPC based upon the final report filed by the police under Section 173 Cr.P.C. and forming part of the complaint, but a Court can take cognizance only on the basis of complaint filed by the public servant and not on the basis of the police report under

Section 173 Cr.P.C. in the FIR.

20. In the present case, order dated 29.07.2020 (Annexure P5) passed by the Judicial Magistrate 1st Class, Gurugram reveals that he did not take cognizance on the basis of the complaint filed by the District Magistrate and rather, took cognizance on the basis of challan submitted by the police. It will be evident from the said order dated 29.07.2020, which reads as under: -

“Challan filed today. It be checked and registered. The I.O. has stated that the accused were released on police bail in the instant case. Offences committed by the accused are bailable in nature, accordingly, accused are granted bail on their furnishing bail bonds in the sum of Rs.20,000/- with one surety in the like amount each. Requisite bonds furnished, which are accepted and attested. Copy of challan supplied to accused free of cost as envisaged under Section 207 Cr.P.C. Now to come up on 04.12.2020 for consideration on charge. Accused are directed to remain present in the Court on the date fixed.”

21. In *“M.S. Ahlawat v. State of Haryana & Anr.”*, AIR 2000 SC 168, it has been held by Hon'ble Supreme Court that provisions of Section 195 Cr.P.C. are mandatory and no Court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section.

22. Further in *“Sandeep Kumar v. State”* 2018 SCC Online Del 12861, it has been held by Delhi High Court, as under: -

“9... Though the complaint under Section 195 Cr.P.C. was before the Metropolitan Magistrate on the dated (02.08.2018) when he took cognizance of the offence under Section 188 IPC, the order passed is conspicuously silent in such regard. From this, it cannot

but be inferred that the cognizance was taken not on the complaint under Section 195 Cr.P.C. but on the report under Section 173 Cr.P.C., as expressly so stated, which was impermissible in law. This error would itself vitiate the proceedings that were held in the following up in the case against the petitioner in the concerned criminal court including the order dated 17.09.2018 whereby the case was put on trial.”

23. In view of the factual and legal position as above, it is held that order dated 29.07.2020 passed by learned Judicial Magistrate 1st Class, Gurugram, taking cognizance of the offences on the basis of police report under Section 173 Cr.P.C, cannot be sustained.

24. It is further important to notice that respondents appear to be not clear as to which order has been disobeyed by the petitioners. As per the final report submitted by the police under Section 173 Cr.P.C., petitioners had allowed the company staff to sleep close to each other and used the bio-metric device to mark the attendance of the staff in violation of the COVID protocol. However, as it was found that company was granted permission vide order dated 08.04.2020 of the Additional Labour Commissioner, so Section 51 of the NDM Act was deleted. The complaint was filed by the District Magistrate, alleging entirely different facts to the effect that petitioners were found walking out of their shelter/home and thus, they disobeyed the order dated 10.04.2020 of the District Magistrate. Disobedience of the order dated 10.4.2020 was not at all possible, prior in time i.e., on 08.04.2020. Further, in the reply submitted before this Court, it is alleged that petitioners violated the order dated 23.03.2020 issued by the Additional Chief Secretary to Government

of Haryana, Health Department (copy Annexure R-1), which allegation neither finds mention in the police report nor in the complaint filed before the Court by the District Magistrate.

25. Besides, no complaint for violation of the order dated 23.03.2020 has been made by the Additional chief Secretary to Government of Haryana, Health Department, whose orders were allegedly disobeyed by the petitioners. District Magistrate being subordinate to Additional Chief Secretary to the Government of Haryana, could not have filed the complaint for violation of the order of the Additional Chief Secretary to Government of Haryana, Health Department.

26. Thus, looking from any angle, the prosecution of the petitioners for alleged commission of offence under Section 188 IPC, cannot be sustained.

27. Coming to the offence under Section 269 IPC, it does not find mention in the complaint filed by the District Magistrate, but finds mention in the police report under Section 173 Cr.P.C. Said Section 269 IPC reads as under: -

“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.

28. Thus, essential ingredients for commission of offence under Section 269 IPC are:

- (i) The disease in question was infectious and dangerous to human life.
- (ii) The accused did an act, which was likely to felicitate spreading of the disease
- (iii) The accused did the act unlawfully or negligently
- (iv) The accused knew or had reason to believe that his act was likely to spread the disease.

29. In ***“Zubair P.K. v. The State of Calcutta High Court”***, MANU/WB/0684/2021-08.09.2021, it was held by Calcutta High Court: -

19. In order to bring home the charges under Sections 269 and 270 of Indian Penal Code, the prosecution is required to prove the ingredients of the offence therein to show that the person has committed any act which his move is likely to spread infection of any disease which is dangerous to life. There is no case laid before this Court that the petitioner was suffering from COVID 19 positive and was wandering in and around the neighbouring area or in the locality in violation of the regulation relating to lock-down due to pandemic situation which cropped up due to COVID 19. Hence, this Court does not prima facie, even find any ingredients of the offence punishable under Sections 269 and 270 of the Indian Penal Code.

30. In ***“Mr. Vishwesh Madane v. The State -Karnataka High Court – Crl Pet. 5185/2021-19.07.2021***, similar view was taken by the Karnataka High Court, which is as under: -

“8. Reading of the complaint averments would clearly go to show that the ingredients for the purpose of attracting section 269 of IPC is completely absent. The Petitioners were all found in a hotel room and therefore, it cannot be said that they were guilty of unlawfully or negligently doing any act which they know or they have reason to believe that it likely to spread the infection of

any disease dangerous to life. It is not the case of the prosecution that any one of the accused persons had tested positive for COVID-19 and in absence of any such material, the offence under section 269 of IPC cannot be prima-facie invoked as against the accused persons”.

31. Similar view was taken by the Madras High Court in “*S. Dinakaran v. State-Madras High Court*” – CrI. O.P. (MD) No.8396 of 2021 -27.07.2021.

32. In the present case also, it is not the case of the respondent-State that any of the petitioners were suffering with Corona Virus on the date of alleged offence. The allegations are that petitioners were responsible for arranging the mattress for stay of the company staff lying near to each other and using bio-metric device. Said allegations do not constitute offence under Section 269 IPC.

33. In view of the entire discussion as above of the factual and legal position, both the petitions are hereby accepted. FIR No.146 dated 08.04.2020 (Annexure P-1) registered under Sections 188, 269/34 of IPC and Section 51 of the NDM Act, at Police Station Badshahpur, District Gurugram, Haryana, along with consequential proceedings arising therefrom including final report dated 11.07.2020 (Annexure P-2) and complaint dated 29.07.2020 (Annexure P-3) along with consequential proceedings, are hereby quashed.

May 11, 2023
Sarita

(DEEPAK GUPTA)
JUDGE

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