

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

CRM-M-4853-2023

Date of Decision:- 23.03.2023

Imran Khan & others

...Petitioners

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Anshul Sharma, Advocate,
for the petitioner

Mr. V. K. Gupta, A.A.G. Punjab.

HARKESH MANUJA, J.

By way of present petition under Section 482 of Code of Criminal Procedure, 1908, petitioners have prayed for quashing of FIR No. 61 dated 09.06.2021, under Section 188 of IPC and Section 51 of Disaster Management Act, 2005, registered at Police Station Satnampura, District Kapurthala and all consequential proceedings arising therefrom.

Brief facts about the case are that ASI of PS Satnampura received a viral video on his whatsapp, in which, petitioner No. 1 was celebrating his birthday alongwith other 03 co-accused/petitioners and 20-25 unidentified persons in his House on the midnight of 07/08-06-2021. As per the allegations in FIR, none of them were wearing masks, not following social distance and thus all having gathered at night

resulted in violation of order number 4139-4192/MA dated 28-05-2021 of the Deputy Commissioner.

Learned counsel for the petitioners submits that as the maximum punishment under both the sections is 1 year, limitation period for taking cognizance as stipulated under Section 468 of Cr.P.C. is one year, but despite expiry of more than one year, no challan has even been presented till date and therefore cognizance of these offences can not be taken at this stage. With respect to section 188 IPC, he submits that the prohibitory order passed by the Deputy Commissioner was never served on the general public or the petitioners as per the manner provided under section 134 of the Cr.P.C. or by any other mode of service and in the absence thereof petitioners cannot be charged with these offences.

On the other hand, learned State counsel submits that by not wearing mask and by not following social distancing norms and gathering at night, the petitioners have violated the order number 4139-4192/MA dated 28 March 2021 and therefore, FIR has been rightly registered against them.

I have heard learned counsel for both the parties and gone through the paper book of the case.

For the purpose of adjudication of present dispute, it may be necessary to delve upon Sections 468, 469 Cr.P.C., which are reproduced hereunder for reference:-

“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 a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation:-

(1) The period of limitation, in relation to an offence, shall commence,—

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded. ”

Maximum punishment that would become imposable upon one being proved guilty of the offence mentioned in the FIR is one year. Section 468 of the Cr.P.C. bars the concerned Court from taking cognizance after lapse of the period of limitation and the period of limitation as per 468(2)(b) is mandated to be one year. FIR in this case was registered on 09.06.2021, so the limitation would expire on 08.06.2022. Though the Trial Court may condone the delay on an

application filed in this regard, but no valid or sufficient reason has come on record before this Court in short reply filed by the state.

With respect to offence under section 188 of IPC, a perusal of language of this offence shows that in order to constitute this offence, there must be disobedience of an order promulgated by a public servant. Moreover, mandatory provision of section 195 of CRPC prescribes pre-requisites for taking cognizance of an offence u/s 188 IPC which mandates the court to take cognizance of this offence only on a complaint filed by the concerned public servant. In the present case, there is no material to show that before registering the case, permission of the concerned jurisdictional Magistrate has been obtained. In such circumstances, applicability of section 188 in the present case is itself erroneous and the respondent has no right to register the case and to investigate the matter.

Stay on further proceedings was granted by this Court on 31.01.2023 while this petition is dated 25.01.2023 and by that time even challan was not presented in this case. Even otherwise, offenses alleged in the FIR under ordinary circumstances are only unintended casual act, without any real intention to break the law and the element of “mens rea” is not even present in this case as it was only because of the Covid-19 pandemic that such actions came within the purview of an offense. At this stage when the effect of Covid-19 pandemic has almost mitigated and it has turned into an endemic with very milder after effects by now, thus, to allow continuing the proceedings of this case will not be in the interest of justice but would rather amount to abuse of process of law.

In view of the discussion held above, this petition is allowed and FIR No. 61 dated 09.06.2021 is quashed qua all petitioners and as a consequence all proceedings arising out of this FIR are also quashed.

Pending miscellaneous application(s), if any, shall also stand disposed of.

23.03.2023

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(HARKESH MANUJA)

JUDGE

Whether speaking/reasoned :

Whether reportable :

Yes/No

Yes/No