

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

CRM-M-4466-2020

Reserved on 20.11.2023

Date of pronouncement:21.11.2023

Anun Dhawan

...Petitioner

vs.

State of U.T., Chandigarh

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Ashish Soi, Advocate
 for the petitioner.

Mr. Anil Kumar Lamdharia, Addl.P.P. for U.T., Chandigarh.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the FIR No.199 dated 17.07.2019 under Section 188 of IPC, 1860, registered at Police Station North, Chandigarh and all subsequent proceedings arising therefrom.

2. The FIR in the present case was registered on the basis of the complaint moved by SI Gurmeet Singh. As per the complainant, at about 8.00 p.m. on 17.07.2019, he alongwith other police officials were on duty in the market of Sector-8-B, Chandigarh, one person came out of Pita-Pit Food Shop, SCO No.34, Sector-8-B, Chandigarh and the complainant asked his name and address and he disclosed the same to be Parveen Kumar son of Anil Kumar, aged 28 years, resident of Village B-12/2131, Adarsh Nagar Naya Gaon, Punjab and the servant, who was working with him, disclosed his name as Ranjit son of Jai Lal, resident of 106 Village Kaimbwala, U.T., Chandigarh. He informed that

he was working with him for the last one year. When he was enquired about informing the police station, the said person could not give any satisfactory reply nor any documentation or permission was produced by him. As per the complainant, Parveen Kumar had violated order No.DM/MA/2019/18031 dated 15.07.2019 under Section 144 Cr.P.C. issued by the District Magistrate, Chandigarh and had committed the offence under Section 188 IPC. So, the FIR was registered against Parveen Kumar and Ranjit son of Jai Lal.

3. Learned counsel for the petitioner contended that in the present case, the District Magistrate had promulgated an order dated 15.07.2019 and the relevant part of the said order is as under:-

“Whereas it has been made to appear that there is an apprehension that anti social elements may make their hideouts clandestinely in the residential/commercial areas of the Union Territory of Chandigarh. If suitable measures to prevent the same are not taken, the unlawful activities of these people can cause breach of peace and disturbance of public tranquility besides posing grave danger to human life and safety to the public property.

And whereas, I Mandip Singh Brar, IAS District Magistrate, U.T., Chandigarh in exercise of the powers vested with me under Section 144 of the Cr.P.C. do hereby order as an emergency measure that no landlord/owner/manager of any residential, commercial, etc. establishments shall rent out any accommodation to any person unless and until he/she has furnished the particulars of the said tenants and Paying Guests to the local police station. Also, no landlord/owner/manger of residential, commercial etc. establishment shall employ any servant unless and until he/she has furnished the particulars of the said tenants and Paying Guests to the local police station. All the persons who intend to offer accommodation on rent or employ any servant shall inform in

writing the particulars of tenants, servants and Paying Guests to the Station House Officer concerned in whose jurisdiction the premises fall. Any breach of this order would invite action under Section 188 of the Indian Penal Code.

In view of the emergent nature of the order, it is being issued ex parte and is addressed to the public in general.

That this order shall come into force with effect from Zero Hours 15.07.2019 and shall be effective for a period of sixty days and including 12.09.2019.

This order shall be promulgated by affixing copy thereof at the police Boards of the office of District Magistrate, Chandigarh and publication in the newspapers having circulation in the area through the office of D.P.R., Chandigarh.

Given under my hand and seal on 15.07.2019.”

4. Learned counsel further contended that the order (Annexure P-2) was issued by the District Magistrate, Chandigarh and the complaint in the present case could have been filed only by District Magistrate or some Superior officer, in view of the provisions contained in Section 195 Cr.P.C. In the present case, the FIR was got registered by SI Gurmeet Singh and it was liable to be set aside on this short ground alone. Learned counsel next contends that he has been falsely involved in the present case as he was the owner of Pita Pit Food Shop, Sector-8-B, Chandigarh and the FIR was not maintainable against him.

5. On the other hand, learned State counsel has vehemently opposed the prayer made by learned counsel for the petitioner. However, he could not dispute the position that the order (Annexure P-2) and the present case were issued by the District Magistrate, Chandigarh and the FIR (Annexure P-1) has been got registered by SI Gurmeet Singh.

6. The only question involved in the present case is with regard to interpretation of Section 195 of Code of Criminal Procedure and the relevant part of the said provision is reproduced below:-

“Section 195 in The Code Of Criminal Procedure, 1973

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;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

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xxxx	xxxx	xxxx	xxxx

7. In the present case, it has been alleged that the order (Annexure P-2) passed by the District Magistrate had been violated. Consequently, the complaint in the present case could have been filed before the Competent Court either by the public servant concerned or by some other public servant to whom he is administratively subordinate. Thus, either the District Magistrate or any other Superior officer could file a criminal complaint in the present case and the FIR itself was not maintainable.

8. The facts in the present case are not disputed. The language of Section 195(1) Cr.P.C. does not leave any scope for ambiguity and the provisions of this section have to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence, the provisions of Cr.P.C. 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 intention appears to be clear that where an offence is committed under Section 188 IPC, it is obligatory for the public servant concerned or any superior officer to file a complaint before the Competent Court of law. Learned counsel for the petitioner has placed reliance on the judgments passed by this Court in ***“Jiwan Kumar Vs. State of Punjab and others”, 2009(1) RCR (Criminal) 415; “Jagdish Vs. State of Haryana”, 2015 (4) RCR Criminal, 694; “Karan Sharma Vs. State of Punjab and another” in CRM-M-11547 of 2017 and CRM-M-47378 of 2022, decided on 29.11.2022, titled as “Shubham @ Shubham Saini Vs. State of Haryana”.***

9. In the present case also, the order (Annexure P-2) was passed by the District Magistrate, Chandigarh and on the violation of the said order, the complaint could have been filed by the District Magistrate, Chandigarh or by

any other officer, to whom he is administratively subordinate. Thus, there is sufficient force in the arguments raised by learned counsel for the petitioner and the present petition is allowed. FIR No.199 dated 17.07.2019 under Section 188 of IPC, 1860, registered at Police Station North, Chandigarh and all subsequent proceedings arising therefrom are hereby quashed.

21.11.2023
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(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes