

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-9779-2022

Date of Decision: 16.01.2023

Satnam Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. A.P.S. Rehan, Advocate for the petitioner.

Mr. G.S. Sandhu, Deputy Advocate General, Punjab.

ASHOK KUMAR VERMA, J. (ORAL)

Short reply dated 16.01.2023, filed by way of affidavit of Sh. Palwinder Singh, Deputy Superintendent of Police, Sub-Division City, District Hoshiarpur, on behalf of respondent-State, is taken on record.

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing FIR No. 37 dated 20.03.2021 (Annexure P-1) registered under Section 188 IPC at Police Station Sadar, Hoshiarpur and all the subsequent proceedings arising therefrom.

Briefly, the present FIR was registered against the petitioner on the basis of statement of ASI Jasvir Singh, Police Station Sadar, Hoshiarpur, on the allegations that on 20.03.2021 at around 10:35 P.M., he along with ASI Sukhwinder Singh and Constable Rohit Memhi, was present near Satsang Ghar, Bajwara, for patrolling and checking in connection with the curfew imposed due to outbreak of Covid-19, a car

bearing registration No. PB-07-AV-9549, make Toyota Etios was seen coming from Jahan Khela. On asking, the driver of the said car disclosed his name as Satnam Singh S/o Lt. Avtar Singh, R/o Manan, District Hoshiarpur, but he failed to produce any permission or pass for travelling in curfew imposed by the Deputy Commissioner, Hoshiarpur and, thus, the aforesaid FIR was registered against the petitioner.

Learned counsel for the petitioner, *inter alia*, contends that the FIR in question was liable to be quashed as police could not register the FIR with regard to commission of offence punishable under Section 188 IPC. In fact, proceedings qua commission of offence punishable under Section 188 IPC could only be initiated on the basis of a complaint in writing by the public servant concerned. The petitioner was issued a valid curfew pass (Annexure P-3) by the competent authority in view of medical care of his 6 months old twin sons who were born premature. In support of his contentions, learned counsel for the petitioner has placed reliance upon a judgment of a Division Bench of this Court this Court in ***Jiwan Kumar vs. State of Punjab and others, 2009 (1) RCR (Criminal) 415.***

On the other hand, learned State counsel has not been able to dispute above said legal aspect of the case.

I have heard learned counsel for the petitioner and carefully gone through the record.

In ***Jiwan Kumar's case (supra)***, a Division Bench of this Court, categorically observed that it would not be open to the police to register a case against the offender for offence under Section 188 IPC and

then to submit a report under Section 173 Cr.P.C. to the concerned court.

The relevant paragraph of above referred judgment is reproduced as under:-

*"8. Coming to the attack of the petitioner in regard to the registration of the F.I.R., it may be noticed that proceedings under Section 188, Indian Penal Code can only be initiated on the basis of a complaint in writing of the public servant concerned made to the Court or to some other public servant to whom he is administratively subordinate. Section 195(1) of the Code restraints the Court from taking cognizance of any offence punishable under Section 188, Indian Penal Code unless a complaint in writing is made to it by the public servant concerned. In other words, no FIR can be registered by the police. It would not be open to the police to register a case against the offence for offence under Section 188, Indian Penal Code and then to submit a report under Section 173 of the Code to the concerned Court. Reliance in this regard can be placed on **Jagtar Singh v. Union Territory, Chandigarh, 1996 (1) RCR 669**, where in this Court held as under :*

"These facts are not disputed. Language of Section 195(1) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence the provisions of Criminal Procedure Code 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 relevant portion of Section is that, "No Court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate". The intention appears to be clear that where an offence is committed under Section 188, Indian Penal Code, the Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned Court is dependent upon the complaint in writing by such officer or an officer superior to such officer.

*The counsel for the petitioner has relied upon **Sawaran Singh v. The State of Punjab, 1994(3) Recent CR 352** and **Bhagat Ram v. The State of Punjab, 1991(1) Recent CR 192**. In both these cases the Court has indicated that the scope of Section 195 (1) of the Code does not contemplate investigation in*

a normal way by the police and filing of the challan, but the complaint has to be presented directly to the concerned Court. In the present case though the complaint is stated to be addressed to the Court, but as it appears it was not presented to the Court and the Court did not pass any orders at that stage."

Admittedly, in the present case, FIR in question has been registered against the petitioner qua commission of offence punishable under Section 188 IPC. In fact, cognizance with regard to commission of offence punishable under Section 188 IPC could only be taken on a complaint in writing by the competent public servant.

From the above referred legal proposition as well as the factual matrix of the case, it is abundantly clear that registration of FIR in question is nothing but is in complete violation of legal proposition as well as settled canons of law, especially, in the circumstances that admittedly, no complaint in writing by Public Servant concerned has been moved as is required under Section 195(1) Cr.P.C. Thus, registration of FIR and commencement of proceedings qua petitioner is impermissible under the provisions of Code of Criminal Procedure. Thus, it deserves to be quashed.

Accordingly, this petition is allowed. FIR No. 37 dated 20.03.2021 (Annexure P-1) registered under Section 188 IPC at Police Station Sadar, Hoshiarpur and all the subsequent proceedings arising therefrom are quashed, qua the petitioner only.

January 16, 2023
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No