

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

**CRM-M-24034 of 2022
Pronounced on : 05.07.2023**

Gurnam Singh Bhullar

....Petitioner

Versus

State of Punjab

....Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Ms. Himani Arora, AAG for Punjab.

GURBIR SINGH J.

1. Prayer in this petition under Section 482 Cr.P.C. is for quashing of FIR No.88 dated 11.07.2020 (Annexure P1) registered at Police Station Sadar Rajpura, District Patiala, under Section 188 of Indian Penal Code (hereinafter called as 'Code'), Section 51 of the Disaster Management Act, 2005 and Section 3 of Epidemic Diseases Act, 1897 as well as final report under Section 173 Cr.P.C. (Annexure P2).

2. The case in hand was registered at the instance of ASI Rajinder Singh, Police Post Jansua on the allegations that on 11.07.2020 he along with other police officials was present at the Bus Stand, village Jansua in connection with patrolling duty. At about 05.30 pm, a secret information was imparted that at Prime Mall, Singer Gurnam Bhullar along with his 40 companions without any permission of the Government, without any mask on the face of any person had gathered and was doing

the shooting of some film. It was against the law due to prevalence of Covid-19 pandemic. If raid was conducted at Prime Mall, then Singer Gurnam Bhullar along with his companions could be apprehended. Since the information was reliable and trustworthy, so ASI sent a ruqa to the police station for registration of case against Singer Gurnam Bhullar and owners of the Prime Mall namely Satish Ahuja, Ashwin and other companions of Gurnam Bhullar, Video Director Khushpal Singh, on the basis of which case in question was registered.

3. After completion of investigation and necessary formalities, challan under Section 188 of the Code and Section 51 of Disaster Management Act, 2005 and Section 3 of Epidemic Diseases Act, 1897 was presented in the Court under Section 173 Cr.P.C.

4. Counsel for the petitioner has argued that petitioner is being prosecuted for offence under Section 188 of the Code but no challan under Section 188 of the Code could have been presented by the investigating officer in view of the specific bar under Section 195 of Code of Criminal Procedure (Cr.P.C). The Epidemic Diseases Act of 1897 does not prescribe any specific punishment but any person on disobeying any regulation or order made under this Act is liable to be punished under Section 188 of the Code. The offence under Section 51 of the Disaster Management Act, 2005 is a non cognizable offence for which lodging of the FIR and investigation by the police at its own is not permissible. Even police recommended that petitioner be declared innocent. Superintendent of Police, Patiala came to the conclusion that petitioner was innocent and

recommended to file discharge application before the Court (Annexure P3) which was further recommended by Senior Superintendent also. Counsel for the petitioner relied upon the cases of C. Muniappan and others vs. State of Tamil Nadu 2010(4) RCR (Criminal) 268, P.K. Lakhani and another vs. State of Punjab and another 2008(2) RCR (Criminal) 838, authorities of Hon'ble Apex Court, Jiwan Kumar vs. State of Punjab and others 2009(1) RCR (Criminal) 415, Rajinder Kumar vs. State of Haryana 2012(1) RCR (Criminal) 481, Jagdish and others vs. State of Haryana, Law Finder Doc Id # 714018 and Vasid @ Basid vs. State of Haryana and another, Law Finder Doc Id # 1912284, authorities of Hon'ble High Court.

5. The learned State counsel has submitted that outbreak of Covid-19 pandemic and its prevalence was an extra ordinary situation. The gathering of the people was totally banned. No activity could took place without permission of the concerned District Magistrate and that permission could only be given for doing such activities which were urgent and subject to observing directions for preventing Covid-19 Pandemic as issued by the Government of Punjab as well as Union of India. The said directions were issued to prevent the spread of COVID-19 pandemic. In the case in hand, there was a gathering without permission, without observing the instructions issued by the Government, so registration of FIR and filing of the challan is in accordance with the law.

6. I have heard the submissions of learned counsel for the petitioner, learned State counsel and have gone through the file.

7. Section 195(1) of Cr.P.C. 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;

(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.

Thus, the Section 195 of Cr.P.C. does not leave scope for any ambiguity. The proceedings under Section 188 of the Code can only be

initiated on the basis of complaint in writing of the public servant or of some other public servant to whom he is administratively subordinate. There is specific bar to take cognizance of the offence punishable under Section 188 of the Code unless complaint in writing is made to the concerned Court by the concerned public servant. Thus, no FIR can be registered for the offence under Section 188 of the Code and no report under Section 173 of Cr.P.C. to the concerned Court can be filed on the basis of evidence collected in the said FIR. In the case of **C. Muniappan vs. State of Tamil Nadu cited (supra)**, it is held that provisions of Section 195 Cr.P.C. are mandatory. The extract of that judgment is as under:-

“25. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Criminal Procedure Code are mandatory. Non compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.”

8. The Division Bench of this Court in the case of **Jiwan Kumar vs. State of Punjab cited (supra)** held as under:-

“10. It is, thus, clear that the proceedings against the petitioner under Section 188 Indian Penal Code have been initiated on the basis of the FIR and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1)(a) of the Code. The registration

of FIR and the launching of proceedings thereafter against the petitioner is not permitted by the Code and thus, cannot be allowed to be sustained.”

9. In the case of **Jagdish vs. State of Haryana cited (supra)**, this Court has held as under:-

“7. From the above referred legal proposition as well as the factual matrix of the case, it is abundantly clear that registration of FIR 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 petitioners is impermissible under the provisions of the Code of Criminal Procedure. Thus, it deserves to be quashed.”

10. In the case of **Vasid @ Basid vs. State of Haryana cited (supra)**, this Court has held as under:-

“5. Section 195(1) Cr.P.C., 1973 specifically provides that no Court shall take cognizance of any offence which is punishable under Section 188 IPC except on a complaint in writing of a public servant concerned or of some other public servant to whom he is administratively subordinate.

11. In the instant case provision of Section 3 of Epidemic Diseases Act, 1897 has also been invoked. Section 3 of the said Act is as under:-

“3. Penalty – Any person disobeying any regulation or order made under this Act shall be deemed to have committed an

offence punishable under Section 188 of the Indian Penal Code (45 of 1860)."

Thus, any offence under the Epidemic Diseases Act, 1897 is deemed to be an offence under Section 188 of the Code. The Epidemic Diseases Act, 1897 does not prescribe any specific punishment. Since the punishment under Section 188 of the Code is prescribed, so procedure under Section 188 of the Code is to be followed by the prosecuting agency for prosecuting a person under the Epidemic Diseases Act. In this case no complaint has been filed but police after registration of the FIR submitted the challan. So, there is a clear violation of the provisions of Section 195 of the Code. The Investigating Officer has also invoked provisions of Section 51 of the Disaster Management Act, 2005 which is as under:-

"51. Punishment for obstruction, etc.-

(1) Whoever, without reasonable cause-

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on

conviction be punishable with imprisonment for a term which may extent to two years.”

12. Section 60 of the Disaster Management Act, 2005 is as under :-

“60. Cognizance of offences.- No Court shall take cognizance of an offence under this Act except on a complaint made by -

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.

The maximum punishment for Section 51 of the Disaster Management Act is two years, so offence is non cognizable and complaint is required to be filed in the Court and Court can take cognizance only on the complaint made by the concerned authority for violation of any provision of the said Act. The complaint is defined under Section 2(d) of Cr.P.C. which is as under:-

“ (d) ‘complaint’ means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

13. Admittedly, the facts in hand are that police registered the FIR in question against the petitioner and others. The investigation was completed and final report under Section 173(2) Cr.P.C. was filed before the concerned Magistrate. The mandatory provisions of Section 195 Cr.P.C. were not followed. Only complaint could be filed by the officer whose orders were violated and not by the police on the basis of investigation. The registration of FIR in the instant case is abuse of the process of law.

14. Resultantly, this petition is allowed and FIR No.88 dated 11.07.2020 (Annexure P1) qua petitioner is quashed and consequently all the proceedings taken therein against the petitioner are also quashed and set aside.

(GURBIR SINGH)
JUDGE

05.07.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No