

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-26294-2023
Reserved on:01.12.2023
Pronounced on: 06.12.2023

ShubhamPetitioner

Vs.

State of U.T. ChandigarhRespondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mukesh Kumar Sharma, Advocate
for the petitioner.

Mr. Manish Bansal, PP, UT Chandigarh with
Mr. Rajiv Vij, APP, UT Chandigarh.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
29	12.04.2020	Sector-19, UT Chandigarh	188 IPC

The petitioner, aggrieved by the registration of FIR captioned above, has come up before this court under section 482 CrPC for its quashing along with further proceedings arising therefrom.

2. Facts of the case are being taken from the reply dated 29.07.2023, filed by the UT, Chandigarh and relevant portion is extracted hereunder:-

*“5. Accordingly, the District Magistrate drew up a complaint under Section 195 Cr. P.C for prosecution of the accused including the Petitioners having committed an offence punishable under Section 188 IPC. The complaint was headed "IN THE COURT OF SH. PARMOD KUMAR JMIC, UT, CHANDI-GARH". Details of the FIR and how the accused were guilty of committing the offence under Section 188 IPC were mentioned in the complaint, and the complaint was titled State through the Advisor to the Administrator, UT, Chandigarh. In this complaint, the following prayer was made:
“It is therefore, respectfully prayed that the accused may be summoned, tried and punished accused for an offence punishable under Section 188 of the Indian Penal Code, 1860 in the interest of justice.”*

3. The case of the prosecution is that Advisor to the Administrator, U.T. Chandigarh, in the exercise of the powers conferred upon him under Section 22 of the Disaster

Management Act 2005, in his capacity as Chairperson, State Executive Committee, Union Territory of Chandigarh, constituted under this Act, passed an order dated 09.04.2020. As per the above-mentioned order, due to COVID-19 pandemic, all people in public places like streets, hospitals, offices, and markets must wear a 3-ply mask or cloth mask compulsorily. The promulgation declared that if instructions are not complied with, it would be a violation and shall be punishable under Section 188 IPC. On 12.04.2020 at 6.30 AM, the police party noticed the petitioner near Math Mandir, Sector 20, Chandigarh, without wearing a mask. On inquiry, he disclosed his name and address, as mentioned in the petition, and he also stated that he had come for a morning walk. When the petitioner was asked to wear a mask, he did not cooperate and argued with the police; as such, an FIR was registered against him. After completing the investigation, the file was sent to the District Magistrate, and after examining, the District Magistrate concluded that an offence under Section 188 IPC was committed, and District Magistrate drew up a complaint under 195 CrPC for the prosecution of the accused. As per para 6 of the reply, the original complaint was duly signed by the District Magistrate, and the same was sent to the police so that the same could be filed before the Competent Court and the District Magistrate has been cited as a witness in the said complaint.

4. Petitioner's case is that no case is made out against him.

5. I have heard counsel for the parties and gone through the pleadings.

6. Based on the reply filed by the U.T., it is explicitly mentioned that after the issuance of the proclamation on 09.04.2020 under Section 22 of Disaster Management Act 2005, whereby violation was made punishable under Section 188 IPC, was applicable in Chandigarh City.

7. As per the prosecution story on 12.04.2020, i.e., when the proclamation was in force, the petitioner was noticed on a public street in the morning at 6.30 am, and when the police officials asked him to wear a mask, he did not cooperate and argued with the police.

8. I have heard counsel for the parties and gone through the pleadings. An analysis of the same would lead to the following outcome.

9. Even if every allegation of the police official is accepted as correct at its face value, it is still not alleged that the petitioner was in somebody else's company. Instead, it is clear that the petitioner was strolling in the morning all alone and had gone for a morning walk. It is evident that it is not the petitioner who had gone towards the police

wearing a mask. At the beginning of the outbreak of the COVID-19 pandemic, the absence of scientific data about the mode of its spread and the ways by which it was contagious was not known. At that time, the petitioner was walking alone, so even if he was not wearing a mask, he did not commit any offence that would violate Section 188 IPC. Simply because the promulgation dated 09.04.2020 (Annexure R-1) stated that if there is any violation of any of the portion of promulgation, then it would amount to an offence under Section 188 IPC would not ipso facto make it punishable since ingredients of 188 IPC are fully met.

10. It is relevant to extract Section 188 IPC, which reads as follows:

188. Disobedience to order duly promulgated by publicWhoever, 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 person 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.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

11. To attract the prima facie violation of Section 188 IPC, the concerned public servant or their successor must point out in the complaint that despite knowing such promulgation, the violator, without any mens rea or intention, disobeyed its directions; And either such disobedience caused or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or such disobedience caused or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray. It is sufficient that the offender knows of the order they disobey and that such disobedience produced or is likely to produce harm.

12. It is not the complainant's case that the petitioner in any manner was instrumental in causing any injury, that is, by spreading the Covid 19. Further there is no evidence like medical record that he was tested for Covid or had any visible symptoms thereof. Thus, in the absence of any harm or obstruction caused to anybody, not wearing of mask would not tantamount to violation of Section 188 IPC.

13. The State has not gathered any evidence to prima facie establish the above essential ingredients, and what disobedience the petitioner caused in this regard. Given the above, an offence under Section 188 of the IPC is not made out against the accused.

14. Given the above, the present petition is allowed. The complaint mentioned above and the FIR No.29 dated 12.04.2020 registered u/s 188 IPC at Police Station 19, Chandigarh, are quashed and set aside. Consequently, all further proceedings are also quashed and set aside. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

06.12.2023
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Whether speaking/reasoned: Yes
Whether reportable: **YES**