

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35803-2021

Reserved on 03.05.2023

Pronounced on 01.09.2023

Poonam Kataria

... Petitioner

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Petitioner in person

Mr. Bijender Dhankar, Addl. AG Haryana

Sandeep Moudgil, J.

1. The petitioner seeks quashing of the FIR No.518 dated 15.11.2020 under Sections 188/270/279/34 IPC registered at Police Station Palam Vihar, District Gurugram.

2. Briefly stated that a complaint was submitted by respondent No.2 alleging that on 15.11.2020, petitioner, Karambir, Rakesh and Sonia, who are living on the first floor and second floor of the house of respondent No.2, where he lives on the ground floor, fired crackers till 2.00 am in the night, despite prohibition by the Deputy Commissioner, Gurugram regarding the same. Due to loud noise, the respondent No.2 faced disturbance and as such the present FIR has been lodged.

3. The petitioner (appearing in person) contended that the contents of the FIR are false, baseless and without any substance and the same has been filed in complicity of the local police as the offence of rash and negligent driving under Section 279 IPC, has been incorporated while there is not even single word alleging the act of commissioning of such offence in whole FIR. She has submitted that the offence under Section 279 IPC has been added to frighten and harass the petitioner and her family members.

4. She further asserts that respondent No.2 is residing as tenant on the ground floor of the same residential building where the petitioner is residing and as such, the respondent No.2, his wife and other family members are in the habit of intimidating the petitioner and her minor children in the absence of her husband. She has also narrated previous dispute with respondent No.2 and in regard thereto, FIR was also lodged against the husband of the petitioner, which was later on found to be false. She has averred that respondent No.2 is of objectionable character and has also installed CCTV cameras focusing the bedroom and washroom of the petitioner which was objected to by her. The petitioner referred to the fact of respondent No.2's involvement in 9 other FIRs and out of which has been declared proclaimed offender in most of the cases.

5. It is further the case of the petitioner that as per the allegations, no offence much less the ingredients of the offence as alleged in the FIR are made out against the petitioner as it is apparent that the FIR has been lodged by the complainant with an ulterior motive for wreaking vengeance against the petitioner and her husband due to personal grudge.

6. Notice of motion in this case was issued on 16.09.2021 and thereafter the respondent No.1 has filed reply dated 19.01.2022.

7. Mr. Bijender Dhankar, learned Addl. AG Haryana averred before this Court that during the course of investigation, the CCTV Footage, photo and pen drive along with certificate u/s 65-8 Evidence Act was taken into possession. The said CCTV footage, photo and pen drive are attached herewith as Annexure R-1 (colly). Apart from that he states that notice u/s 41-A Cr.PC was issued to the petitioner and co-accused Rakesh Kumar Kataria, Sonia and Karambir on 19.11.2020, who were asked to produce the keys of the terrace for

recovery of case property, however, they refused to do so. The terrace was seen from the window panes, wherein no fire crackers could be found. Referring to the written statement filed the State, he submits that Section 201 IPC was added in the present case and sanction order and the order prohibiting burning of crackers were obtained from the District Magistrate, Gurugram and on joining the investigation on 06.04.2021, the petitioner's disclosure statement was recorded on which she affixed her signatures only on the investigation joining form but refused to sign the disclosure statement. Mr. Dhankar would argue that Section 180 IPC was added rightly against the petitioner at this stage, while deleting Section 270 during the checking of challan before submitting it to the trial Court on 26.10.2021 finding the petitioner to be involved in two other cases i.e., (i) FIR No. 428 dated 25.09.2020 u/s 323/34/427/506 IPC P.S. Palam Vihar, Gurugram and (ii) FIR No. 516 dated 15.11.2020 u/s 295/323/34/354/427/506 IPC P.S. Palam Vihar, Gurugram.

8. Heard learned counsel for the parties and gone through the record.
9. In reference to allegations under [Section 188](#) IPC, it would be relevant to have a look at the definitions of [Section 188](#) of IPC and [Section 195](#) of Cr. P.C., which are reproduced below:-

"188. Disobedience to order duly promulgated by public servant.-- Whoever, 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 persons 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."

"195. Prosecution for contempt of lawful authority or 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.....

Except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate."

10. A perusal of language of Sections reproduced above 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 Cr.P.C. 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.

11. [**In Daulat Ram v. State of Punjab \[AIR 1962 SC 1206\]**](#), the Hon'ble Supreme Court held that the prosecution under [Section 182](#) of the Indian Penal Code must be on a complaint in writing by the Tahsildar (public servant). In view of absolute bar against the Courts for taking cognizance of the offence punishable under [Section 182](#) of the Indian Penal Code, except in the

manner provided by [Section 195](#) of the Code, the said judgment equally applies to the offence under [Section 188](#) also.

12. In [M.S. Ahlawat v. State of Haryana \[2000\(1\) SCC 278\]](#), the Hon'ble Supreme Court considered the provisions prescribed under [Section 195](#) of the Code at length and observed in paragraph 5 as under:

"5. ...Provisions of [section 195 CrPC](#) are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section."

13. A coordinate Bench of this Court in ***Pawan Giri & Ors. State of Haryana CRM-M-51595-2021*** decided on 07.02.2022 after discussing catena of judgments by the Hon'ble Apex Court held that courts are prohibited from taking cognizance of the offences unless and until public servant or their superior makes the complaint. Relevant para is reproduced hereunder:

"11. It is further pertinent to observe that [Section 195 Cr.P.C.](#) imposes certain restrictions on the authority of the public servant to prosecute under from taking cognizance of the offences mentioned therein unless and until the public servant or their superior makes the complaint. [Section 195](#) opens with the word "No Court" and thus imposes a bar against any court to take cognizance of the offences contemplated thereunder except in accordance with the procedure prescribed therein. "Complaint" has been defined under [Section 2 \(d\) of the Cr.P.C.](#) and has to be filed in accordance with the procedure prescribed thereunder."

14. In the light of dictum of Apex Court referred above it is crystal clear that [Section 188](#) of the Indian Penal Code deals with disobedience to orders duly promulgated by the public servant. The offence, as already stated, is allegedly disobedience to the orders duly promulgated by the Collector. [Section](#)

195 of the Code lays down that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code, except on the complaint in writing to the public servant concerned or of some other public servant to whom he is administratively subordinate. In the present case, there is no complaint filed by Collector or his subordinate officer. The Sub-Inspector of Police has filed the charge-sheet.

15. In the present case further there is no complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate. Therefore, in view of the bar under Section 195(1)(a) of the Code, the learned Magistrate ought not to have taken cognizance of the offence punishable under Section 188 Indian Penal Code on the report submitted by the Sub-Inspector of Police. Therefore, the cognizance is taken contrary to the specific bar envisaged under Section 195(1)(a) of the Code.

16. 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.

17. Now, without examining the applicability of Section 270 of IPC, it would be improper to straight away to record any conclusion by this Court and for that a perusal of this provision would be the best option as it reads:-S

270. Malignant act likely to spread infection of disease dangerous to life.--Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with

imprisonment of either description for a term which may extend to two years, or with fine, or with both."

18. While invoking any of these two provisions against any person, there must be some material to suggest that his actions were likely to spread infection of a dangerous disease as noted by the Calcutta High Court in **Zubair PK vs. State CRR No.6 of 2021 decided on 08.09.2021**, the relevant part of which is reproduced below:

"In order to bring home the charges under [Sections 269 and 270](#) of Indian Penal Code, the prosecution is required to prove the ingredients of the offence therein to show that the person has committed any act which his move is likely to spread infection of any disease which is dangerous to life. There is no case laid before this Court that the petitioner was suffering from COVID 19 positive and was wandering in and around the neighbouring area or in the locality in violation of the regulation relating to lockdown due to pandemic situation which cropped up due to COVID 19. Hence, this Court does not prima facie, even find any ingredients of the offence punishable under [Sections 269 and 270](#) of the Indian Penal Code."

Similar observations were also made by this court in **Pawan Giri's** case (supra) as well which is reproduced below:

"10. A perusal of [Section 269](#) IPC shows that in order to attract the same, the act of an accused must be one which is likely to spread infection of any disease dangerous to life. A perusal of the report filed by respondent under [Section 173](#) Cr.P.C. does not indicate any prima facie evidence collected by the Police as to whether the petitioner or the other members of the family were suffering from any infectious disease or would have caused spread of any infectious disease. In the absence thereof, it cannot be assumed that the petitioners were either the carriers of infection or

would have caused spread thereof. Apart therefrom, the report also does not indicate the exact guideline purportedly alleged to have been violated. In the absence of any such specific guidelines which is alleged to have been violated, there is no presumption that the act of the petitioners was unlawful."

19. If the ration of abovementioned judgment is application to the facts and circumstances of the instant petition, I notice that case was registered at the instance of respondent No.2 during COVID-19 pandemic, no Covid-19 test of the petitioner was not conducted to show that she was infected from the virus. It has also not been mentioned in the FIR that which specific guideline was violated by the petitioner. Even otherwise the only allegation which appears to be made against the petitioner is that of lighting of fire crackers and rash driving. Additionally, no specific circumstance has been specified herein to show the specific circumstance in this case to register an FIR when in general only fine was to be paid on account of this negligence. Therefore, charges under [Section 270 IPC](#) also cannot stand.

20. Now left with Section 279 of the IPC, for making out a case, it must be proven that the accused was driving the vehicle on a public road in a rash and negligent way, threatening human life or likely to cause harm or injury to another person. It is forbidden to take the danger of conducting such an act carelessly or without regard for the consequences. Criminal rashness and criminal negligence have to be similar. It can't just be carelessness or an error in judgment. To be convicted under this provision, it must be shown that the accused was driving the vehicle on a public road in a manner that endangered human life or was likely to cause harm or injury to another person. The

meaning of criminal rashness and negligence was defined in *Empress of India v. Idu Beg* [1881] as follows:

“criminal rashness is hazarding a dangerous or wanton act with the knowledge that it will cause injury but without the intention to cause injury or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the willful and culpable neglect to take reasonable and proper care and precautions to avoid injury to the public in general or to an individual in particular, taking into account all of the circumstances surrounding the charge”

21. In this case, there is no allegation worth the name suggesting the petitioner was driving the offending vehicle and that too if it was being driven at more than the specified speed limit etc. etc. On the face of it, the provision imposed of Section 279 IPC appears to be concocted and with oblique motive

22. Therefore, considering the parameters laid by Hon'ble Supreme Court in "[State of Haryana and others vs. Ch.Bhajan Lal and others](#)", reported as 1991 (1) R.C.R. (Criminal) 383, in my considered opinion, present petition satisfies the criteria envisaged u/s 482 of [Cr.P.C.](#), i.e. to meet the ends of justice and also to prevent the abuse of the process of law, to invoke the powers under Section 482 [Cr.P.C.](#), as the present case stands covered under the specified conditions as laid down in [Ch.Bhajan Lal's](#) case (supra), which are reproduced hereunder:-

"a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;....

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;.....

(d) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;....."

23. In view of the discussion made hereinabove, this petition is allowed and FIR No.518 dated 15.11.2020 and all the consequential proceedings arising therefrom are quashed against the petitioner.

24. Ordered accordingly.

01.09.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No