

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-33691-2020 (O&M)

Date of Decision: 07.07.2023

Arun Sood

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. N.S. Vadhera, Advocate, for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash FIR No.30 dated 02.05.2020 registered at Police Station Doraha, Police District Khanna, District Ludhiana under Sections 188 & 269 of the IPC and all the subsequent proceedings arising therefrom.

2. FIR was lodged on the complaint of ASI Kulwinder Singh, as per which on 02.05.2020, when he along with other police officials was present at main chowk Doraha in connection with lock-down *nakabandi*, a Creta car came from the side of railway road, Doraha, which was signaled to be stopped. The driver was accompanied with two girls. The driver was apprised about the imposition of the lock-down to prevent the spread of pandemic Covid-19. However, feeling infuriated, driver sped away the car. He dropped the girls and came back again. On inquiry, he disclosed his name as Arun Sood (petitioner) and was advised to follow the Government instructions, but paying no heed, he again sped away. After completion of investigation, challan was filed.

3. It is contended by learned counsel for the petitioner that he was having valid curfew pass on the alleged date of occurrence. He did not violate any Government order. Besides provisions of Section 195 Cr.P.C. have not been complied, as cognizance cannot be taken on the police report for offence under Section 188 IPC. It is further argued that Section 269 IPC is not remotely made out against the petitioner, there being no allegation that the petitioner was positive with Covid-19 or any other disease so as to spread the same.

4. As per the report submitted by the respondent/State, after completion of investigation, challan has already been submitted before the learned trial Court for consideration of charge.

5. Section 188 of the Indian Penal Code, reads as under:

“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 of obstruction, annoyance or injury, to any 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.

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.”

6. Thus, the necessary ingredients of an offence under Section 188 IPC are: -

- (a) there must be an order promulgated by a public servant,*
- (b) such public servant must be lawfully empowered to promulgate such order,*
- (c) Such order should direct the accused to abstain from an act or to take certain order with certain property in his possession or under his management,*
- (d) Accused disobeys the order knowingly,*
- (e) Such obedience must cause or tend to cause -*
 - (i) obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed; or*
 - (ii) danger to human life, health or safety; or*
 - (iii) causes or tend to cause riot or affray.*

7. However, no Court can take cognizance of an offence under Section 188 IPC except on a written complaint made by the concerned public servant, whose order has been disobeyed. In this regard, Section 195(1)(a) Cr.P.C. is relevant to note, which 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.”

8. Thus, Court can take cognizance of an offence punishable under Section 188 IPC only on the complaint either made by the public servant concerned or of some other public servant to whom he is administratively subordinate.

9. In the present case, admittedly the FIR has been lodged on the complaint of ASI Kulwinder Singh. It is alleged that the petitioner violated the Government instructions pertaining to lock-down, but no such order has either been referred to in the police report or in the FIR to show as to which specific instruction has been violated by the petitioner.

10. The cognizance of offence under Section 188 IPC could have been taken on the complaint only of the public servant concerned or of some other public servant to whom he is administratively subordinate, whose order was disobeyed by the petitioner. However, in the present case, admittedly it is on the FIR lodged by ASI Kulwinder Singh that police prepared report under Section 173 Cr.PC and filed the challan.

11. In view of the bar placed by Section 195 CrPC, the Magistrate cannot take cognizance on the challan filed by the Police for offence under Section 188 IPC.

12. Coming to the offence under Section 269 IPC, it reads as under: -
“269. Negligent act likely to spread infection of disease dangerous to life. —Whoever unlawfully or negligently 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 six months, or with fine, or with both.

13. Thus, essential ingredients for commission of offence under Section 269 IPC are:

- (i) The disease in question was infectious and dangerous to human life.
- (ii) The accused did an act, which was likely to felicitate spreading of the disease
- (iii) The accused did the act unlawfully or negligently
- (iv) The accused knew or had reason to believe that his act was likely to spread the disease.

14. In **“Zubair P.K. v. The State of Calcutta High Court”**, MANU/WB/0684/2021-08.09.2021, it was held by Calcutta High Court: -

*19. 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 lock-down 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.*

15. In **“Mr. Vishwesh Madane v. The State -Karnataka High Court – Crl Pet. 5185/2021-19.07.2021**, similar view was taken by the Karnataka High Court, which is as under: -

*“8. Reading of the complaint averments would clearly go to show that the ingredients for the purpose of attracting section 269 of IPC is completely absent. **The Petitioners were all found in a hotel room and therefore, it cannot be said that they were guilty of unlawfully or negligently doing any act which they know or they have reason to believe that it likely to spread the infection of any disease dangerous to life. It is not the case of the prosecution that any one of the accused persons had tested positive for COVID-19 and in absence of any such material, the offence under section 269 of IPC cannot be prima-facie invoked as against the accused persons**”.*

16. Similar view was taken by the Madras High Court in “**S. Dinakaran v. State-Madras High Court**” – CrI. O.P. (MD) No.8396 of 2021 - 27.07.2021.

17. In the present case, it is not the case of the respondent/State that the petitioner was suffering from corona virus or any other disease on the date of alleged offence, which could spread the infection to others and thus, ingredients of Section 269 IPC are completely missing.

18. In view of the entire discussion above, this petition is hereby allowed. FIR No.30 dated 02.05.2020 registered at Police Station Doraha, Police District Khanna, District Ludhiana under Sections 188 & 269 of the IPC and all the subsequent proceedings arising therefrom are hereby quashed.

19. Pending application(s), if any, shall also stands disposed of.

(DEEPAK GUPTA)
JUDGE

07.07.2023

Vivek

1. Whether speaking/reasoned?

Yes/No

2. Whether reportable?

Yes/No