

202                      IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-38831-2022  
DECIDED ON: 05.01.2023.

GURSEWAK SINGH AND OTHERS

.....PETITIONERS

VERSUS

STATE OF UT CHANDIGARH AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. P.S. Khurana, Advocate  
for the petitioners.

Mr. Abhinav Gupta, Addl. PP, UT, Chandigarh  
assisted by ASI Vijender Singh.

\*\*\*\*\*

**SANDEEP MOUDGIL, J. (Oral)**

The instant petition under Section 482 Cr.P.C has been preferred for quashing the FIR No. 140 dated 10.08.2020 registered at PS East Sector-26 District Chandigarh under Section 188 of IPC (Annexure P-1) and all subsequent proceedings arising therefrom.

The primary contention raised by the learned counsel for the petitioner is to the fact that it can be by way of a complaint under Section 195 of Cr.P.C by which proceedings can be initiated but an FIR cannot be registered.

Learned counsel for the petitioner has relied upon judgments of this Court passed in “*Sandeep Gandotra vs. U.T., Chandigarh*”, (2020) 1 RCR (Criminal) 1004 and in CRM-M-633-2014 titled as '*Sweta Estates Private Limited vs. State of Haryana and others*'.

In the case of Sandeep Gandotra's (supra), this Court has held as under:-

“ *Learned counsel representing the petitioner mainly contended that present FIR has been registered under Section 188 IPC whereas the complainant in this case could be the District Magistrate only as per provision of Section 195 to 199 Cr.P.C. Are exceptions to the general rule. In such specified cases, complaint in writing is required as per provisions of Section 195 Cr.P.C only. There is absolute bar against the Court taking cognizance of the case under Sections 182/188 IPC except in the manner provided under Section 195 Cr.P.C.*

*Learned counsel representing the respondent-UT, Chandigarh has not disputed this legal proposition.*

*Similar matter was before this Court in **Jaatar Singh vs. Union Territory, Chandigarh, 1996(1) RCR 669**, wherein this Court observed 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.”*

*As per above and as per provisions contained in Section 195 (1) Cr.P.C, the present FIR bearing No.205 dated 17.07.2018 registered under Section 188 IPC at Police Station West Sector 11, Chandigarh is not maintainable and the same is hereby quashed.”*

The Union Territory, Chandigarh has filed reply dated 30.11.2022 wherein the legal propositions set up by the learned counsel for the petitioners in support of his case have been duly admitted in para 4, which reads as under:

*“That the petitioner has sought quashing of the impugned FIR while relying upon “Sandeep Gandotra vs. U.T., Chandigarh & Sweta Estate Private Limited vs. State of Haryana & Others wherein this Hon'ble High Court quashed FIR under Section 188 IPC while interpreting Section 195 Cr.P.C. It is respectfully submitted that there is no dispute with regard to ratio of law, however, the facts of the present case are distinguishable from the facts of the cases relied upon by the petitioner.”*

Learned counsel appearing on behalf of Union Territory, Chandigarh, though contends that he was informed of the order of DM but is not in a position to controvert the legal position as has been held in judgment relied upon by the learned counsel for the petitioners.

Heard learned counsel for the parties at length.

Section 195 of the Code reads 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.*

*(2) Where a complaint has been made by a public servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.*

*(3) In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.*

*(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:*

*Provided that-*

*(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;*

*(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”*

*As per Section 195 of the Code, no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.*

*In the present case, proceedings against the petitioner under Section 188 of IPC have been initiated on the basis of F.I.R. and not on the basis of any complaint in writing of the public servant concerned as it required under Section 195 (1) (a) of the Code. However, Section 195 of the Code specifically provides that proceedings under Section 188 of IPC can only be initiated on the basis of complaint made in writing by the public servant concerned to the Court. The police has no power to register a case for the offence under Section 188 of IPC and investigate the matter. The registration of FIR for the offence under Section 188 of IPC is not permitted by the Code.”*

*In the case of **Jiwan Kumar vs. State of Punjab and others: 2009***

*(1) R.C.R. (Criminal) 415, a Coordinate Bench of this Court has held as*

under:

*“8. Coming to the attack of the petitioner in regard to the registration of the FIR, it may be noticed that proceedings under Section 188 IPC 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 restrains the court from taking cognizance of any offence punishable under Section 188 IPC 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 offender for offence under Section 188 IPC 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) R.C.R. (Crl.) 669, wherein 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 IPC, 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 C.R. 352 and *Bhagat Ram v. The State of Punjab* 1991 (1) Recent C.R. 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.”

9. It is admitted case of respondent No. 3 that FIR No. 128 (P3) was registered against the petitioner on 16.6.2005 under Section 188 IPC. The petitioner was thereafter arrested and interrogated. After the completion of the investigation, the challan (final report under Section 173 of the Code) was presented against the petitioner before learned Chief Judicial Magistrate, Mansa on 20.12.2005 and the charge was framed on 20.1.2006. Further that the case is now fixed for recording of prosecution evidence.

10. It is, thus, clear that the proceedings against the petitioner under Section 188 IPC 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. Resultantly, the petition is allowed. Promulgation order dated 27.5.2005 (P-2) issued by the District Magistrate, Mansa is quashed. Similarly, FIR No. 128, dated 16.6.2005 registered at Police Station City Mansa under Section 188 IPC (P-3) and all the proceedings taken thereunder against the petitioner are also quashed and set aside.”

In view of above discussion and law laid down in **Jiwan Kumar's case (supra)**, instant petition is allowed. FIR No. 140 dated 10.08.2020 registered at PS East Sector-26 District Chandigarh under Section 188 of IPC (Annexure P-1) alongwith all the criminal proceedings arising out of the said

FIR stands quashed.

However, the respondent No.1/UT, Chandigarh will be at liberty to take appropriate remedial steps in accordance with law, if so advised.

05.01.2023

Meenu

(SANDEEP MOUDGIL)  
JUDGE

*Whether speaking/reasoned: Yes/No*  
*Whether reportable: Yes/No*