

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

Date of Decision:- May 05, 2023

CRM-M-49000-2019 (O&M)

Amarjit Singh

...Petitioner

vs.

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. S. K. Chaudhary, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.

1. Prayer in this petition filed under Section 482 Cr.PC is for quashing of case FIR No.82 dated 03.08.1996 registered under Section 188 IPC at Police Station Division No.4, Jalandhar, District Jalandhar and all consequential proceedings.

2. The allegations against the petitioner are that he along with others was raising vocal slogans and protesting against the Government despite prevention proceedings under Section 144 Cr.PC having been being imposed.

3. Learned counsel for the petitioner submits that FIR in question was registered in the year 1996 and despite passage of 23 years till date, even the investigation has not concluded so far in the present FIR. He further submits that speedy trial is a fundamental right as enshrined under Article 21 of the Constitution of India. He also submits that this FIR qua other accused person was quashed on this ground vide order dated 24.10.2017 passed by this Court in CRM-M-

35579-2015 and pleading parity with him he prays for quashing of the FIR qua present petitioner as well.

4. No reply has been filed by the State. However, State counsel submits that even the record pertaining to the said FIR is not traceable.

5. It is on record that this Court vide order dated 24.10.2017 in CRM-M-35579-2015 after holding that speedy trial is a fundamental right as provided under Article 21 of the Constitution of India relaying upon the authorities of Hon'ble Apex Court in the case of **Lokesh Kumar Jain vs. State of Rajasthan, 2013(3) RCR (Crl.) 763** and in the case of **Ramanand Chaudhary vs. State of Bihar, 1994(2) RCR (Crl.) 491** as well as taking into consideration that the proceeding in this FIR well pending for about 13 years and delay was on account of inaction of complainant department which cannot be attributed to the petitioner in any manner, quashed the proceedings arising out of this FIR.

6. In addition to that, FIR in present case has been registered only under section 188 of IPC and a bare perusal of section 188 of IPC 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. In the present case, neither there was any mention of promulgated order issued by any

public servant; nor any such complaint was filed at its instance, thus, applicability of Section 188 in the present case is itself erroneous.

7. At this stage, it would be appropriate to take note of the judgment of the Hon'ble Apex Court in **State of UP Vs. R.K. Srivastava**, reported as (1989) 4 SCC 59; wherein it was observed to the effect that if allegations are same against all the accused and after perusing the FIR, no offence is made out, then FIR needs to be quashed not only qua the accused who has approached the Court; but also qua the other accused who have not approached the Court; but are similarly situated.

8. Accordingly, the present petition is allowed and the FIR No.82 dated 03.08.1996 registered under Section 188 IPC at Police Station Division No.4, Jalandhar, District Jalandhar and all consequential proceedings arising therefrom are not only quashed qua the petitioner, however, it is further clarified that as allegations are same against all the accused persons, FIR No. 903 dated 16.09.2017 is quashed qua all other accused persons as well.

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

May 05,2023

**(HARKESH MANUJA)
JUDGE**

anil

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