

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

**CRM-M-53492 of 2022
Date of Decision:- 30.01.2023**

Rohit Kumar and another

....Petitioners

Vs.

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Somnath Tayal, Advocate
for the petitioner.

Mr. N.K. Sheoran, DAG, Haryana.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioners seeking quashing of FIR No.237 dated 30.5.2021 registered under Sections 188, 269, 270 IPC and Section 51(b) of Disaster Management Act, 2005 at Police Station Purani Sabji Mandi, District Rohtak (Annexure P-1) and all the subsequent proceedings arising therefrom.

As per the allegations recorded in the impugned FIR the police received information on 30.05.2021 that Mukesh Pahwa, owner of hotel Crown Inn has opened his hotel and entertaining the

customers despite the fact that lock down was imposed due to spread of Covid-19 pandemic and prohibitory orders were issued by the District Administration. Immediately thereafter the police went to the said hotel where Mukesh Pahwa was present and on checking the petitioners were found enjoying party in the hotel despite the fact that all the petitioners were well aware about the restrictions imposed by the District Administration as well as by the Government to prevent the spread of Covid-19 virus. That on enquiry all the accused including the petitioners, admitted that they had organized a party after taking on rent some rooms in the said hotel. Consequently, the impugned FIR was registered.

The counsel for the petitioners has submitted that in the present petition, both the petitioners were students and at the relevant time petitioner No.2 had gone to Rohtak for attending her college while petitioner No.1 had also gone to Rohtak for making preparations to appear in competitive examination and on that day they got late and thus thought of staying in some hotel and found that Hotel Crown Inn, which was just opposite to the Civil Hospital was open and they booked rooms in the said hotel for over-night stay.

The counsel for the petitioners has further contended that the Court cannot take cognizance of offence under Section 188 IPC without complaint in writing being lodged by the concerned official or his superior in terms of provisions of Section 195(1) Cr.P.C. In support of his contention the counsel for the petitioners referred to *C.*

Muniappan Vs. State of Tamil Nadu 2010(9) SCC 567, wherein it was observed that for prosecution of a person under Section 188 IPC, there must be a complaint by the public servant whose lawful order has been violated, as is the mandatory requirement of Section 195 (1) Cr.P.C.

The counsel for the petitioners has further contended that the Court cannot take the cognizance of offence punishable under Section 51(b) of Disaster Management Act, 2005 in the absence of complaint made by the competent authority as per the provisions of Section 60 of the said Act.

The counsel for the petitioners has further contended that the prosecution has also failed to prima facie establish that the petitioners committed offences punishable under Sections 269 and 270 IPC. In this regard the counsel for the petitioners contended that there is nothing on the record to show that the petitioners were found to be infected with Covid-19 virus, when they were found present in the hotel premises. The counsel for the petitioners has further contended that there is nothing available on the record to show that the petitioners committed any unlawful or negligent act likely to spread Covid-19 virus.

The counsel for the petitioner has further submitted that the impugned FIR already stands quashed against co-accused Dr. Chandni and another vide order dated 11.10.2022 passed by this Court in CRM-M- 46697 of 2021.

The counsel for the petitioners further submitted that in the light of the above, no purpose is going to be served by keeping the criminal proceedings pending against the petitioners on the basis of the impugned FIR.

On the other hand the State counsel has submitted that the petitioners assembled in a hotel premises in violation of the prohibitory orders passed by the District Administration and the guidelines issued by the State Government to prevent the spread of Covid-19 virus. The State counsel has further submitted that at the relevant time Covid-19 virus was in full bloom and the Government had taken all possible steps to prevent the spread of disease and as such restrictions were imposed regarding opening of private hotels and gathering of people. That in the instant case the petitioners violated all the said restrictions, despite being fully aware about them. The State counsel has further contended that in the given circumstances, no ground is made out to quash the impugned FIR.

I have considered the submissions made by counsel for the parties.

Admittedly in the present case, the District Administration had issued prohibitory order in wake of Covid-19 pandemic. As per the allegations appearing in the FIR, the petitioners violated the said prohibitory order issued by the District Magistrate and thus committed an offence punishable under Section 188 IPC. As per the provisions of Section 195(1) Cr.P.C., it is the said authority (District

Magistrate) or his superior, who was competent to make a complaint to prosecute the petitioners for an offence punishable under Section 188 IPC and in this context reliance be placed on *C.Muniappan's case* (supra), which has been relied upon by the counsel for the petitioners, wherein it was held that cognizance of offence punishable under Section 188 IPC cannot be taken by the Court except in accordance with Section 195(1)(a)(i) Cr.P.C. and unless complaint in writing is filed by the Public Servant concerned.

Admittedly, in the instant case, no such complaint was made by the concerned authority (District Magistrate) or his superior, and thus the bar provided under Section 195(1) Cr.P.C. is clearly applicable and the Court cannot take cognizance of offence under Section 188 IPC against the petitioners.

In order to attract the penal provisions of Sections 269 and 270 IPC, the act of an accused must be one which was likely to spread infection of any disease dangerous to life. There is no prima facie evidence indicating that petitioners were suffering from any infectious disease or tested Corona positive at the relevant time. So it could not be assumed that the petitioners were either the carriers of infection or would have caused the spread thereof. Nothing is available on the record to show that the petitioners were carrying disease so as to attract offence punishable under Section 269 IPC. Further, nothing is there on the record to show that the petitioners malignantly did any act likely to spread such like infection, so as to

attract offence under Section 270 IPC. Therefore the contention raised by the State counsel that the petitioners would spread Covid-19 infection was without any basis. Hence the FIR registered against the petitioners under Sections 269/270 IPC is without any substance.

In the instant case, FIR was also registered for commission of offence under Section 51(1)(b) of the Disaster Management Act, 2005. Section 60 of the said Act provides that no Court can take cognizance of the aforesaid offence, except on a complaint made by the competent authority or any person, who has given prior notice of 30 days in the manner prescribed. Admittedly, in the case at hand, no such complaint was lodged by the competent authority or person who had given prior notice of 30 days. In the absence of the same, the Court cannot take cognizance of offence punishable under Section 51(1)(b) of the Disaster Management Act, 2005.

Further, it appears that there was no intention on the part of the petitioners to spread the disease to another person. As per the allegations recorded in the FIR, the petitioners were simply found present in a private hotel and they have explained reasons for their presence in the said hotel.

In the light of the above, this Court is of the view that it is a fit case where the Court can exercise its inherent jurisdiction under Section 482 Cr.P.C. as the continuation of criminal proceedings

against the petitioners on the basis of the impugned FIR would tantamount to sheer abuse of process of law.

For the aforesaid reasons, present petition is allowed and the impugned FIR No.237 dated 30.5.2021 registered under Sections 188, 269, 270 IPC and Section 51(b) of Disaster Management Act, 2005 at Police Station Purani Sabji Mandi, District Rohtak (Annexure P-1) alongwith all the consequential proceedings arising therefrom are hereby quashed qua the present petitioners.

30.01.2023
P. Chawla/ Jiten

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No