

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

CRM-M-351-2023

Reserved on: April 25, 2023

Pronounced on: May 02, 2023

Parminder Singh @ Tinku		...Petitioner
	vs.	
State of Punjab		...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. K.S. Walia, Advocate for the petitioner
Mr. V. K. Gupta, A.A.G. Haryana.

HARKESH MANUJA, J.

1. By way of present petition under Section 482 of Code of Criminal Procedure, 1908, petitioner has prayed for quashing of FIR No.0068 dated 16.06.2020 under Section 188, 269, 270. of IPC, 1860 registered at Police Station Begowal, District Kapurthala and all the consequential proceedings arising therefrom including order dated 11.07.2022 vide which the proceedings under Section 82 Cr.P.C. for declaring the petitioner as Proclaimed person have been initiated.
2. Brief facts of the case as mentioned in the FIR are that when police officials were on a patrolling duty on 16.06.2020 they saw two young men coming without wearing the mask on a motorcycle bearing registration Number PB-57-C-0449. When police officials stopped and asked their names and addresses, they told their names as Gurpreet Singh alias Preet (Driver) and Parminder Singh alias Tinku (present petitioner) as pillion rider. As both young men have allegedly violated the instructions related to Covid-19 pandemic, an FIR was registered against them under Sections 188, 269, 270 IPC 1860.

3. Explaining the brief background of the case, learned counsel for the petitioner submits that petitioner and his co-accused were stopped by the police officials and were asked about their names and even after telling them the reason that they had come out to bring medicines for their sister, who was suffering from and was undergoing treatment for Tuberculosis and even a prescription was shown to the police, the police did not pay any heed and dragged them to the police station and registered the present FIR at the back of the petitioner. He also submits that respondent has setup a false story in the form of the impugned FIR and it is being specifically denied that the petitioner and his co-accused were not wearing the masks. In fact, both of them were wearing the masks and it was only at the asking of the police officials that they took out their masks to tell them about their addresses. After, their names and details were noted down; they were arrested and were taken to the Police Station, where no tests were conducted to find out whether the petitioner and his co-accused were actually likely to spread any infection/ Covid. On merits, learned counsel for the petitioner submits that no case under Section 188 IPC was made out against the petitioner and no procedure as envisaged under Section 195 Cr.P.C. was followed while registering the impugned FIR against the petitioner and petitioner did not disobey any order duly promulgated by the State. She further submits that neither any test was conducted upon the petitioner; nor was he suffering from the Corona Virus at that time, thus, in the absence of any such evidence, the offences under Sections 269 and 270 of IPC also cannot be attracted. With respect to PO orders, learned counsel submits that unknown by the fact that the impugned FIR was registered, the petitioner left for

Portugal, i.e. his place of work on 19.07.2020 where he has been working for past 2 years. Even in impugned order dated 11.07.2022, it was noted that arrest warrants of accused/ petitioner received back with the report that he has gone abroad, however, despite that proclamation proceedings u/s 82 of Cr.P.C were initiated without making any effort to serve the petitioner through concerned Embassy. In support of her submissions, she places reliance upon the judgment in "**Dr. Apurva Ghiya Vs. State of Chhattisgarh**" reported as 2021 Cri. LJ 890, "**Zubair P.K. Vs. The State**", CRR No. 6 of 2021 decided on 08.09.2021 (Single Bench of Calcutta High Court) & "**Pawan Giri & Others v. State of Haryana**" CRM-M-51595-2021 decided by Single Bench of Punjab and Haryana High Court on 07.02.2022.

4. On the other hand, learned State counsel submits that by not wearing mask and by roaming on the streets in violation of Covid guidelines, the petitioner along with other co-accused has violated the orders promulgated in this regard and therefore, FIR has been rightly registered against them.

5. I have heard learned counsel for both the parties and gone through the paper-book. 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 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."

"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."

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.

6. A coordinate Bench of this Court in **Pawan Giri's** case (supra) 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 the relevant sections. The Courts are prohibited

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."

Similarly in Dr. Apurva's case, Hon'ble Chhattisgarh High Court held that in the absence of mandatory compliance of the provision of Section 195 Cr.P.C., registration of FIR for offence under Section 188 IPC is barred. Relevant para is reproduced hereunder:

"30. From a conspectus of the aforesaid judgments rendered by their Lordships of the Supreme Court (supra) and the Madras High Court (supra), it is quite vivid that in order to prosecute an accused for the offence punishable under Section 188 of the IPC, it is imperative to undergo the procedure envisaged under Section 195(1)(a)(i) of the Code i.e. complaint in writing of public servant concerned or some other public servant to whom he is subordinate, otherwise cognizance of offence under Section 188 of the IPC cannot be taken and if this imperative procedure is not complied with, the entire prosecution for offence under Section 188 of the IPC would be rendered void ab initio, as Section 195 of the Code is an exception to the general rule contained in Section 190 of the Code wherein any person can set the law in motion by making complaint. The provisions of Section 195 of the Code are mandatory and non-compliance with it will make the entire process void ab initio and without jurisdiction as well. As such, since cognizance of offence under Section 188 of the IPC can be taken on the basis of complaint in writing filed by the public servant concerned within the meaning of Section 2(d) of the Code, offence under Section 188 of the IPC being cognizable offence is not also saved by Explanation appended to Section 2(d) of the Code, as by Explanation to Section 2(d) of the Code, report made by police officer after investigation of non-cognizable

offence is only to be treated as complaint and person making the complaint is to be treated as complainant and police report or FIR is not a complaint and further, charge-sheet is a report of police officer. Therefore, the first information report also cannot be registered under Section 154 of the Code for offence under Section 188 of the IPC, as registration of FIR after investigation would culminate into police report under Section 173(8) of the Code which cannot be taken cognizance of by the Magistrate under Section 190 of the Code, as such registration of FIR for offence under Section 188 IPC is barred."

In the present case, 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.

7. Now, let us turn the discussion towards Sections 269, 270 of IPC, which are reproduced hereunder for reference:-

"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."*

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 the 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."*

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 in **Zubair's** case (supra) as well, 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."

If we apply the ratio of above mentioned judgments in the present case, we can notice that in this case also no Covid-19 test of the petitioner was conducted to show that he 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 he was not wearing a mask, though it has been denied by the petitioner on affidavit. 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 269, 270, IPC also cannot stand.

8. Now let us look into the submissions made by the learned counsel for the petitioner regarding the PO proceedings initiated against the petitioner. In this context it would be appropriate to reproduce the relevant part of the impugned order dated 11.07.2022:

“Accused Gurpreet Singh on bail with counsel Sh. APS Bedi, Adv. Arrest warrants of accused Parminder Singh received back with the report that he has gone abroad. This court is of a view that the presence of accused Parminder Singh cannot be procured through arrest warrants and coercive methods are required to procure his presence. Hence, proclamation proceedings u/s 82 of Cr.P.C be initiated against the accused Parminder Singh for 05.09.2022.”

A perusal of this order reveals that proclamation proceedings u/s 82 of Cr.P.C were initiated against the petitioner at his local address despite of report regarding petitioner being abroad. In these circumstances, it cannot be said that the petitioner was absconding or deliberately concealing himself from the proceedings of the Court as he has already left for another country 02 years back on 19.07.2020. In that eventuality, it was obligatory for the trial Court to execute the process through the Embassy of the concerned country as stipulated under Section 105 d (ii) of Cr.P.C. Similar observations were made by this Court in case titled as **"Sarabjeet Singh v. State of**

Punjab", bearing number CRM-M No. 11258 of 2020, decided on 09.08.2022, wherein it was held as under:

"...The reason being, that neither any valid personal service could be caused, upon the present petitioner, nor substituted service could be caused, upon him, as at the relevant time, he was residing in Dubai, and, consequently, it was incumbent, upon the learned Magistrate concerned, to ensure that service through ordinary processes, is caused, upon the present petitioner, and, that too, through the aegis of the embassy of India in Dubai, and, thereafter if the above process failed, it became incumbent, upon the learned Magistrate concerned, to make an order for extradition process, being launched, against the present petitioner, for hence ensuring his making his personal appearance, before him, for the relevant purpose.

6. However, none of the above re-courses became adopted by the learned Magistrate concerned, and, rather the latter proceeded to make invalid dependences, upon the deficit report of the serving constable. Therefore, any reliance, as, placed by the learned Magistrate, upon the report of the serving constable concerned, is vitiated, and, also the dependant thereon(s) rather the impugned order, is also completely flawed."

9. Similarly, this Court in CRM-M-53486 of 2022 titled as **"Bhajan Singh v. State of Punjab"** decided on 18.11.2022, has held that proclamation proceedings without effecting service upon the petitioner, who was residing abroad, were not justified. Hence, order dated 11.07.2022, vide which the proceedings under Section 82 Cr.P.C. for declaring the petitioner as Proclaimed person have been initiated, is also not legally sustainable.

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 specified 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 Court, to invoke its powers for quashing of the FIR as present case is duly covered under the following 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;.....*
- (e) 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;.....”*

10. 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.

11. In view of the discussion made hereinabove, this petition is allowed and FIR No.0068 dated 16.06.2020 and all the consequential proceedings arising therefrom including the order dated 11.07.2022

vide which the proceedings under Section 82 of Cr.P.C. for declaring the petitioner as Proclaimed person have been initiated against him are quashed. It is further clarified that as the allegations are same against other accused as well, thus, FIR No.0068 dated 16.06.2020 is quashed not only qua the present petitioner; but also for other accused person as well.

12. It has been noted by this Court that there are many cases pending before the courts wherein offences alleged in the FIR under ordinary circumstances are only unintended casual act, without any real intention to break the law and the element of “mens rea” are not present in those cases and only it was because of the Covid-19 pandemic that such actions came within the purview of an offence. At this stage when the effect of Covid-19 pandemic has almost mitigated and it has turned into an endemic with very milder effects, State of Punjab, Haryana and Chandigarh (U.T.) are requested to review criminal cases for the violation of Covid-19 guidelines. This exercise will not only help in reducing the burden on the Courts and will relieve the citizens, but at the same time, even State would be benefitted from the burden of prosecution in all such cases.

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

May 02, 2023
sanjay

(HARKESH MANUJA)
JUDGE

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