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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1706/2022, CRL.M.A. 7313/2022

PRIYA NARANG

..... Petitioner

Through: Mr. Akul Mehnadru, Adv.

versus

STATE OF DELHI (GOVT. OF NCT) & ORS. Respondents

Through: Mr. Raghuvinder Verma, APP for the
State with SI Anupam, PS Amar
Colony.

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Date of Decision: 2nd May, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed under Section 482 Cr. P.C. seeking following prayers:

“A. Pass an appropriate order/ direction quashing:

“(i) FIR No. 128/2020, dated 09.04.2020, registered against the
Petitioner at Police Station Amar Colony, Delhi;

(ii) Complaint dated 18.09.2020 under Section 195 Code of Criminal Procedure, 1973 by ACP, Kalkaji, New Delhi in the Court of Metropolitan Magistrate, Saket Court, New Delhi;

(iii) Final Form report submitted under section 173 Cr.P.C. under Sections 188, 269 & 270 of Indian Penal Code, 1890, Section 3 of the Epidemic Diseases Act, 1897 and Section 51 of the Disaster Management Act, 2005;

(iv) Order dated 26.03.2021 issuing summons passed by the Ld. Metropolitan Magistrate, Saket Court, New Delhi in Cr CASE/0004440/2020 and all other related/ consequential proceedings emanating therefrom”

2. The present FIR has been lodged against the petitioner for violating quarantine norms issued in the wake of Covid-19 pandemic. As per the FIR it has been alleged that the petitioner was directed to remain in 14 days home isolation w.e.f. 17.03.2020 to 30.03.2020 in terms of the prohibitory order No. 608-647/ACP, Kalkaji, Delhi dated 24.03.2020. However, the CDR of her mobile number, reflected that the petitioner was outside her home and not following the said directions, thereby flouting the Covid-19 norms.
3. Basis the said allegations, FIR No. 0128/2020 came to be registered on 09.04.2020 against the petitioner herein under sections 188/269/270/271 of IPC, section 3 of Epidemic Diseases Act and section 51 of Disaster Management Act at PS Amar Colony.
4. Briefly alleged the facts are that the Ministry of Health and Family Welfare, Government of India issued certain Travel Advisories on 11.03.2020 and 16.03.2020. It has been submitted that in terms of the said Travel Advisories, the passengers travelling from the countries

namely, China, Italy, Iran, Republic of Korea, France, Spain, Germany, UAE, Qatar, Oman, and Kuwait were mandated to quarantine themselves for 14 days. It is submitted that on 17.03.2020, the petitioner who is employed as a cabin crew with TATA SIA Airlines Ltd. (Vistara) in regular discharge of her professional duties, operated the Delhi-Kathmandu-Delhi, Vistara flight - UK 155 and UK 156, and after landing in Delhi at 18:20 hours, headed back to her residence at Dayanand Colony. Thereafter, again on 18.03.2020 to 20.03.2020, the Petitioner operated flights to Mumbai, Bangalore and back to Delhi in regular discharge of her professional duties.

5. It has been submitted that as on 17.03.2020 and 18.03.2020, when the petitioner operated the aforesaid flights, there was no advisory issued by the Government of India mandating 14 days quarantine for passengers travelling/transiting from Nepal. The prohibitory orders dated 24.03.2020 and 31.03.2020 only mandate compulsory 14 days quarantine with respect to travelers from certain countries namely China, Italy, Iran, Republic of Korea, France, Spain, Germany, UAE, Qatar, Oman, and Kuwait. Thus, the petitioner who operated the flight from Nepal was not required to undergo the mandatory quarantine for 14 days. She was only required to self-monitor her health, which was duly done by her. It has been submitted that the petitioner was neither issued a quarantine tag from the airport, nor did the authorities paste a quarantine poster outside her residence as was the practice followed by the Government at the relevant time. It is reiterated that the Petitioner was throughout in good health and exhibited no symptoms.

6. Further, grievance of the petitioner is with respect to the non-applicability of the prohibitory orders dated 24.03.2020 and 31.03.2020. It is the plea of the petitioner that the said orders came into effect only from 24.03.2020 and 01.04.2020, respectively, and thus cannot have any retrospective application on the petitioner, who was directed to quarantine from 17.03.2020 to 30.03.2020 as per the FIR.
7. It has been averred that prior to the registration of the present FIR, certain police officials visited the premises of the petitioner on 01.04.2020 and inquired about her health and took her phone number, and further on 04.04.2020 when the police came to get some documents signed, however did not get the same signed as the petitioner was not issued any quarantine tag from the Authorities upon her return to Delhi Airport. It has been further alleged that on neither of these days, was the petitioner asked to undergo a Covid-19 test.
8. Thereafter, on 09.04.2020 the police registered the present FIR against the petitioner. Subsequently, on 26.07.2020, the petitioner was called to PS Amar Colony and was made to sign the Pabandinama and on the same day she was served with a Notice under Section 41A CrPC. It has been submitted that despite joining the investigation, a chargesheet has been filed against the petitioner for offences under Sections 188, 269, 270 of IPC, Section 3 of EDA and Section 51 of DMA and a Complaint under Section 195 CrPC was submitted before the Ld. MM, Saket Court, New Delhi for violation of the Prohibitory order dated 31.03.2020. The petitioner was summoned vide order

dated 26.03.2021. Pursuant to the summoning order, the petitioner appeared on 16.09.2021 and the matter was posted for 11.02.2022. In the meanwhile, the petitioner also filed an application seeking reference of the present matter to Lok Adalat. However, the Ld. MM vide order dated 11.03.2022 recorded that the matter could not be disposed of in the Pre-Lok Adalat sitting and posted the same for further proceedings on 05.07.2022. Aggrieved, thus the petitioner has preferred the present petition.

9. Ld. Counsel submits that in the FIR as per the Govt. Travel Advisory the petitioner was directed to self-quarantine w.e.f. 17.03.2020 to 30.03.2020. Ld. Counsel for the petitioner submits that the petitioner could not have violated the Prohibitory order dated 31.03.2020 which came into effect only from 01.04.2020 at 00:00 hours to remain valid till 14.04.2020. Ld. Counsel submits that the said order cannot have any retrospective effect. It is further submitted that as such, even the said order requires quarantine for suspected/confirmed Covid-19 cases only and the petitioner was neither a suspected nor a confirmed case of Covid-19. Ld. Counsel in this respect has drawn the attention of this Court to its earlier order dated 05.07.2022 wherein it was *inter alia* held as under:

“Vide order dated 19.5.2022, the State had been directed to submit a status report. The learned APP for the State submits that the status report has been filed. The same is however not on record. The State may assist the Registry to get the same placed on record.

The learned counsel for the petitioner has however produced a copy of the status report that has already been received by the petitioner.

The petitioner vide the present petition seeks the quashing of the FIR No. 128/2020, dated 09.04.2020, under sections 188/269/270/271 of the Indian Penal Code, 1860 PS Amar Colony, and Final Form report submitted under section 173 of the Cr.P.C., 1973, under Sections 188, 269 & 270 of IPC, Section 3 of the Epidemic Diseases Act, 1897 (“EDA”) and Section 51 of the Disaster Management Act, 2005, submitting to the effect that the submissions that are sought to be made by the respondent that during the COVID 19 pandemic, the petitioner had been directed to stay at her home at House No. C-101, Dayanand Colony, Lajpat Nagar-4, New Delhi for quarantine period from 17.3.2020 till 30.3.2020 for 14 days is not brought out through any document on record.

The learned APP for the State submits that she seeks the assistance of the Investigating Officer and she is presently not in possession of the document to show that the petitioner had been directed to stay at her home during the period 17.3.2020 to 30.3.2020.

Inter alia, it has been submitted on behalf of the petitioner, that the order dated 31.3.2020 of which contravention is alleged against the petitioner as issued by the ACP, Kalkaji, a copy of which is placed on record as Annexure P-3 itself indicates that the said order is w.e.f. 1.4.2020 to remain valid for quarantine till 14.4.2020 and it has thus been submitted that it could not have been retrospectively applicable. A catena of verdicts has been relied upon by the petitioner in relation thereto.

Without any observations on the merits or demerits, in the interest of justice, the proceedings before the learned trial Court are stayed till further directions in the present petition. The State is directed to produce the documents whereby directions were issued to the petitioner to stay at her residence from the date 17.3.2020 to 30.3.2020 for a period of 14 days, which be placed on record

before the next date of hearing with a copy thereof being supplied to the petitioner through counsel.

Renotify on 29.8.2022.”

10. Thereafter, in pursuance of the above directions, learned APP for the state has placed on record the Prohibitory order No. 608-647/ACP/Kalkaji, New Delhi dated 24.03.2022 which is reproduced as under:

“ORDER

(Under Section 144 of Criminal Procedure Code, 1973)

Whereas, based on declaration by World Health Organization on 11.03.2020 of the outbreak of COVID-19 as a global pandemic and notifications issued by the Government of India and Government of NCT of Delhi, it is apprehended that there is likelihood of fast and widespread community transmission of COVID-19. This poses a serious threat to human life, health and safety. Therefore, it has become necessary to take all required precautionary steps to mitigate the possible detrimental effects of the spread of COVID-19 for public health, public safety, and public order.

Now, therefore, in exercise of the power conferred upon me by Section 144 of the Criminal Procedure Code 1973 (No. 2 of 1974) read with Government of India, Ministry of Home Affairs, New Delhi notification No.U11036/3/1978(1)UTL dated 01.07.1978, I, Govind Sharma, Assistant Commissioner of Police, Kalkaji, New Delhi promulgate the following prohibitory orders for maintaining public health, public safety and public order in the jurisdiction of Police Stations of Sub Division Kalkaji, New Delhi:

1. Assembly of any kind for demonstrations, processions, protests etc is prohibited.

- 2. Any gathering social/ cultural/ political/ religious/ academic/ sports/ seminar/ conference is prohibited.*
- 3. Organization of weekly markets (except for vegetables, fruits and essential commodities), concerts, exhibitions etc. is prohibited.*
- 4. Guided group tours conducted by various private tour operators are prohibited.*
- 5. Any individual suspected/confirmed with COVID-19 shall take measures for prevention/treatment i.e. home quarantine/institution quarantine/ isolation or any such person shall cooperate to render assistance or comply with the directions of the surveillance personnel.*
- 6. Any person contravening this order shall be punishable u/s 188 of Indian Penal Code.*

As the notice cannot be served individually on all concerned, the order is, hereby, passed ex-parte. It shall be published for the information of public through press and affixing copies on the Notice Boards of the offices of all DCSP, Addl. DCSP, ACSP, Tehsils, all Police Stations and offices of the New Delhi Municipal Corporation, North Delhi Municipal Corporation, East Delhi Municipal Corporation, South Delhi Municipal Corporation, Public Works Department, Delhi Development Authority and Delhi Cantonment Board.

This order will come into force with effect from 24.03.2020 from 04-00PM and remain valid up to 12 midnight of 31.03.2020.

(GOVIND SHARMA)

*Assistant Commissioner of Police
Sub-Divisional Kalkaji, New Delhi.*

No. 608-647/ACP/Kalkaji, New Delhi dated 24.03.2020.

Copy forwarded for information and necessary action to the:-

- 1. Secretary, Ministry of Home Affairs, Government of India, New Delhi.*
- 2. Chief Secretary, Government of NCT of Delhi, I.P. Estate, New Delhi.*
- 3. Secretary to Lt. Governor, Delhi.*
- 4. All Secretaries, Govt. of NCT of Delhi, I.P. Estate, New Delhi.*
- 5. Deputy Director, I. B., MHA, G.O.1., New Delhi.*
- 6. All Spl. Cs.P//Joint Cs.P./Addl.Cs.P/Delhi.*
- 7. DCsP/Addl.DCSP of all Districts/Units of Delhi including Principal/PTC & FRRO for communicating to all the ACSP/SHOs/Inspectors. One copy of the order may be got pasted on the notice boards of the Offices (11 copies for district and 10 for units).*
- 8. DCP/HQ, Delhi.*
- 9. SO to C.P./Delhi.*
- 10. Secretary, NDMC (2 copies) with one spare copy of the order may be got pasted on the notice board outside the committee's office.*
- 11. Commissioner, MCD (with one spare copy for pasting it all the prominent notice board outside the corporation's office for the public).*
- 12. PRO, Delhi Police with 30 spare copies for publicity in the Local Press/Radio/Television.*
- 13. District Magistrate, Delhi for pasting one copy of the order on the Notice Board.*

14. Head Peshi Clerk to the Financial Commissioner (FC) Delhi for pasting outside the Court Room of FC Delhi.

15. Director of News Service, AIR for broadcasting.

16. Director of Information and Publicity, Government of the NCT of Delhi (2 copies) with the request for publicity in the press.”

11. A perusal of the above order dated 24.03.2020 also reflects that the same was enforceable w.e.f. 24.03.2020 from 04:00PM to remain valid up to the midnight of 31.03.2020. The said order cannot be retrospective in effect, and thus cannot be applicable to the period the petitioner was directed to remain quarantined, which was from 17.03.2020 to 30.03.2020. Further, as per the Advisories dated 11.03.2020 and 16.03.2020 issued by the Ministry of Health and Family Welfare, only passengers travelling from certain countries were required to mandatorily quarantine for 14 days. There was no such advisory with respect to travelers from Nepal. Thus, there is no document in fact to suggest that the petitioner was directed to remain in home isolation from 17.03.2020 to 30.03.2020 as alleged in the FIR and charge sheet. Further, even the prohibitory order dated 31.03.2020 is of no avail to the prosecution, as it is well settled that a restriction cannot be imposed retrospectively.

12. Learned APP for the State has been unable to produce any document to show that the petitioner was indeed directed to remain in home isolation from 17.03.2020 to 30.03.2020. In absence of any such orders, there cannot be said to be any violation committed on the part of the petitioner. This Court is of the considered view that the very

genesis of the prosecution case against the petitioner is faulty.

13.I have considered the submissions. The present FIR emanates out of peculiar facts arising during Covid-19 pandemic. The scope of powers conferred under Section 482 Cr.P.C. are wide and can be exercised (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In the present case, the relevant period is from 17.03.2020 to 30.03.2020. During the said period, Covid-19 (corona) started spreading like wildfire which was a grave matter of concern. The government had issued various directions and guidelines for the purpose of ensuring the safety and security of the citizens. It was the duty of the citizens to comply and adhere to the said directions not only for their own safety but for the safety of their family members and the society at large. However, at the same time, such cases have to be seen with the perception that the said violation has occurred on account of some carelessness or due to circumstances, which were beyond the control of the persons who have allegedly committed the violation. The petitioner was merely discharging her professional duties and moreover, in absence of any such order directing the petitioner to quarantine for 14 days, this Court considers that the present FIR and all the consequent criminal proceedings arising therefrom are liable to be quashed. In view of the above, this Court considers that no useful purpose would be served in continuing with the present FIR and subsequent proceedings. This is a fit case in which this court can exercise its jurisdiction under Section 482 Cr.P.C. It is well settled that a restriction cannot be imposed

retrospectively.

14. The petitioner is present in person and has been duly identified by the IO. The IO submits that the petitioner is not involved in any other complaint.
15. Taking into account the totality of facts and circumstances of the case, the present FIR No. 128/2020, dated 09.04.2020 registered at PS Amar Colony, Delhi under Sections 188/269/270/271 of IPC, section 3 of Epidemic Diseases Act and section 51 of Disaster Management Act and all other proceedings emanating therefrom are quashed.
16. Accordingly, the present petition stands disposed of.

DINESH KUMAR SHARMA, J

MAY 2, 2023

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