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

+ CRL.M.C. 3453/2022 & CRL. M.A. 4085/2023

MANAN DUDEJA

..... Petitioners

Through: Mr. Jugal Wadhwa, Mr. Rishabh Wadhwa and Mr. Raghav Goyal, Advocates, Advs.

versus

THE STATE N.C.T. OF DELHI

..... Respondents

Through: Mr. Hemant Mehla, APP for the State with SI Kavish, PS Janakpuri

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Date of Decision: 23rd February, 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 seeking quashing of case FIR No. 0311/2020 registered under Sections 188/269 IPC at PS Janak Puri, Delhi. Chargesheet dated 03.05.2020 has been filed under sections 188/269 IPC.

2. As per the allegations levelled in the FIR and chargesheet, on 03.05.2020 during the covid-19 pandemic at around 10:30 PM, the petitioner was found travelling in his car, while coming from the side of Pankha Road towards Najafgarh Road, without any mask or medical precautions. It has

been alleged that when the petitioner was stopped by the police and asked the reason of his being out on the street, he had no justified answer and said that for the last many days, while sitting at home, he was getting bored, so he had come out of the house to roam around. It has also been alleged in the FIR and charge sheet that the petitioner has violated the lockdown rules imposed by the government vide notification No. 3532-3631/ACP/R.G Dt. 15/04/2020, in order to curb the spread of COVID-19 and has committed offences u/s 188/269 IPC. It is submitted that a notice u/s 41A of Cr.P.C was given, and petitioner was bound and relieved after necessary proceedings. Basis the said complaint, the instant FIR No. 0311/2020 was registered under Sections 188/269 IPC at PS Janak Puri.

3. Learned counsel for the petitioner submits that the petitioner on 03.05.2020, was alone in his self-driven car and was going back from the hospital to his house. Learned counsel submits that the wife of petitioner was admitted in the OBG (Obstetrics and Gynaecology), Department at Human Care Medical Charitable Trust, Manipal Hospitals, Sector-6; Dwarka, New Delhi on 02.05.2020, where through Caesarean operation she delivered a baby girl on 02.05.2020 and was discharged along with the baby on 05.05.2020. Learned counsel submits that the place of petitioner's apprehension i.e. Pankha Road, Uttam Nagar, New Delhi, falls right between Dwarka, where the said hospital is situated and the house of the petitioner in Subash Nagar, New Delhi. Learned counsel submits that the house of the petitioner/accused in Subhash Nagar, is about 8-10 kms from the said hospital. Learned counsel further submits that the registration of the present FIR is bad in law as the essential ingredients of offence under

Sections 188 and 269 IPC are not made out from the FIR as well as the final report u/s 173 Cr.P.C. Learned counsel has pointed out that there is no document or investigation to substantiate that the petitioner was suffering from any communicable disease and as such, the petitioner could not have spread the infection of any disease that may be labelled as dangerous to life. Learned counsel submits that thus offence under Section 269 IPC is not made out. Learned counsel submits that moreover, as per the explanation contained under section 188 IPC, it is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm. Learned counsel submits that at the time the petitioner had no knowledge of the said notification 3532-3631/ACP/R.G Dt. 15/04/2020 which was issued for the period from 15.04.2020 and was ending on the midnight of 03.05.2020. It has been submitted that the present FIR was filed 1 and ½ hrs before the said notification was ending and the same as such does not reveal that the petitioner having knowledge of the said notification, wilfully disobeyed the same.

4. Learned counsel further contends that the learned Trial Court has wrongly taken cognizance on the chargesheet and not on the complaint under section 195 Cr.P.C. Learned counsel submits that the same is in contravention of the provisions contained under section 195 Cr.P.C, in as much as it is imperative to first obtain a complaint u/s 195 Cr.P.C for the registration of FIR under the said provision. Learned counsel submits that the subsequent obtaining of the said complaint, to fill up the lacuna, which

has been filed with the charge-sheet is not the statutory compliance of section 195 Cr.P.C. Moreover, the complaint u/s 195 Cr.P.C filed along with the chargesheet is undated and does not find mention in the present FIR.

5. I have considered the submissions. The present FIR stems from the peculiar facts which is stated to have occurred during the time of the COVID-19 pandemic.

6. This Court while exercising jurisdiction under 482 CrPC for quashing criminal proceedings must bear in mind the various incidental aspects such as relevant facts and circumstances of the given case, seriousness of the offences and its social impact on the society at large. The Courts ought to consider whether the offence was a personal or a private wrong or if it was a social wrong and its social implications and impact on the society. The principal duty of the Courts while exercising powers under Section 482 CrPC to quash criminal proceedings should be to scan the entire facts to find out the thrust of the allegations. It is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection, and courageous prudence. Section 482 Cr.P.C. preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. Thus, while adjudicating whether a FIR or criminal proceeding is liable to be quashed, the High Courts must evaluate and weigh if the ends of justice would be served and justify the exercise of such inherent power.

7. In the present case, the facts are peculiar in nature. The FIR was lodged on 03.05.2020 against the petitioner u/s 188 & 269 IPC for violating

covid rules in the lock down imposed during the COVID-19 pandemic. During the relevant time, spread of Covid - 19 infection was rampant and affected masses all over the world. The government had issued various directions, guidelines, and notifications for the purpose of safety and security of the citizens and to curb the rapid spread of the infection. It was the bounden duty of the citizens to comply and adhere to the said directions not only for their own safety but for the safety of all others. However, at the same time, in such cases what has to be seen is that whether the violation has occurred on account of some carelessness or due to circumstances which were beyond the control of the persons alleged to have committed the violation. A perusal of the medical report of the wife of the petitioner reflects that the wife of the petitioner was admitted in the OBG (Obstetrics and Gynaecology), Department at Human Care Medical Charitable Trust, Sector-6; Dwarka, New Delhi on 02.05.2020, where through Caesarean operation she delivered a baby girl on 02.05.2020 and was discharged along with the baby on 05.05.2020. The FIR was lodged on 03.05.2020 i.e. just one day after the delivery of the baby, when the petitioner was stated to be going back home from the hospital. As per the FIR the petitioner was found driving his car alone without wearing a mask and without taking any medical precaution. However, perusal of the record highlights the peculiar facts of the present case, and it is reasonable to consider that the petitioner was going back home after visiting his wife and new-born child at the hospital. It is also safe to consider that the petitioner would not be visiting his wife and new-born child at the hospital had he been carrying the infection himself and as such there is no document or investigation to corroborate that the petitioner was in fact suffering from any communicable

disease. The offences under section 188/269 IPC are in the nature of petty offences unless the same are combined with some more serious offences. Moreover, contrary to the contention of the petitioner, there is nothing on the record to show that cognizance was taken on the chargesheet or the complaint.

8. In ***Gurinder Singh vs State***, 1996 37 DRJ 598, it was *inter alia* held by the Hon'ble Supreme Court:

“5. A bare reading of Section 195, Cr.P.C. would show that for a Court to take cognizance of an offence punishable under Section 186, IPC, the pre-condition is a written complaint to be filed by the public servant. Admittedly, no such written complaint had been filed by Constable Hukam Singh. In the absence of such a complaint, I am in agreement with the contention of Mr. Andley, that the learned M.M. could not have taken cognizance of the offence punishable under Section 186, IPC. Statement made by Constable Hukam Singh and as recorded under Section 161, Cr.P.C. or for that matter under Section 164, Cr.P.C. cannot and would not constitute a written complaint as required under the provisions of Section 195, Cr.P.C. The contention of Mr. Jolly that the statement of Constable Hukam Singh recorded under Section 161/164 Cr.P.C. should be treated at par with a written complaint as envisaged under Section 195 Cr.P.C., is without force. Statement under Section 161 or 164 Cr.P.C. cannot be equated as a special complaint in writing stipulated under Section 195 Cr.P.C.

9. The Magistrate in this case, to my mind, was not empowered by law in this behalf to take cognizance. Hence proceedings initiated by him in the absence of special complaint as required under Section 195 Cr.P.C. are bad in law and without jurisdiction. When Magistrate acts in contravention of bar under Section 195 Cr.P.C., such proceeding as a whole are required to be quashed.”

9. There is nothing on record to suggest that cognizance was taken on the private complaint and not on the charge-sheet. It is pertinent to mention

that cognizance for the offence under Section 188 Cr. P.C. can be taken only on the basis of complaint under Section 195 Cr. P.C. promulgated by the public servant. It is also pertinent to note that the DDMA after examining all the relevant facts related to the issue of penal provisions for not adhering to the covid protocol of wearing of mask at public places, decided that the penalty under this provision of the said notification will not be applicable to a lone person in self driven four wheeler vehicles vide notification dated 04.02.2022. Though, the said notification does not have any retrospective effect however, the fact remains that the petitioner in the present case was driving alone without a mask in his self driven car.

10. This is a fit case in which this court can exercise its inherent power under Section 482 Cr.P.C to quash the proceedings in order to secure the ends of justice and to prevent abuse of the process of the courts.

11. 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.

12. Taking into account the totality of facts and circumstances of the case, the present FIR No. 0311/2020 dated 03.05.2020 registered at PS Janak Puri, New Delhi under Sections 188/269 IPC and all other proceedings emanating therefrom are quashed.

13. The present petition with pending application stands disposed of.

DINESH KUMAR SHARMA, J

FEBRUARY 23, 2023/Pallavi..