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

% ***Date of Decision: 29th November, 2023***

+ CRL.M.C. 4827/2022 and CRL.M.A. Nos. 19392/2022 & 19394/2022

RASHMI SONI

..... Petitioner

Through: Ms. Arundhati Katju, Ms. Mallika Joshi and Ms. Shrisij Borthakur, Advocates with Petitioner in person.

versus

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

Through: Mr. Amit Sahni, APP for State with SI Amar Singh, P.S. Kishangarh.
Respondents No. 2 and 3 in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. By this petition under Section 482 Cr.P.C., Petitioner seeks quashing of FIR No.166/2020 dated 06.04.2020 registered at P.S.: Kishangarh; Final Form Report under Section 173 Cr.P.C. w.r.t. Sections 188/269/270/336 IPC; complaint dated 10.03.2021 under Section 195 Cr.P.C.; and order dated 27.11.2021 of the learned MM, Patiala House Courts, issuing summons to the Petitioner.
2. Petitioner is present in Court and is identified by IO SI Amar Singh, P.S. Kishangarh. Grievance of the Petitioner in the present petition is to the invocation of the quarantine order retrospectively leading to filing of the aforesaid complaint, FIR and charge sheet.



3. Briefly stated the prosecution case is that Petitioner travelled to USA and after returning on 29.02.2020 did not maintain quarantine till 16.03.2020. On 06.04.2020, Police officials from P.S.: Kishangarh checked on the 'quarantined persons' in the colony where the Petitioner resides and did not find the Petitioner at her residential address. Police officials obtained Petitioner's mobile number from her brother and on inquiring on the phone learnt that after returning from USA on 29.02.2020 she had resumed office and was travelling to work till 16.03.2020 when her employer permitted work from home. The allegations were recorded in a *ruqa* dated 06.04.2020 and a FIR was registered against the Petitioner for not quarantining herself at home in violations of the lockdown norms thereby increasing the likelihood of spreading the COVID-19 virus.

4. On 10.03.2021, a complaint under Section 195 Cr.P.C. was filed by the concerned ACP with new and different allegations that on 04.04.2020 during patrolling, Petitioner was wandering here and there without any reasonable reason, just for fun and accordingly, a case was registered against her under Sections 188 and 269 IPC being FIR No. 166/2020. It was further alleged that Petitioner was found violating the Notification dated 01.07.1978 and order dated 31.03.2020. Final Form Report dated 12.03.2021 was filed under Section 173 Cr.P.C. and forwarded to the learned MM, Patiala House Courts. On 19.07.2021, the learned MM passed an order in Cr. Case No. 9565/2021 arraying the Petitioner as an accused and putting the case for consideration on 27.11.2021. On the said date, an order was passed summoning the Petitioner. Since the Petitioner did not receive the summons, she could not be present on 25.03.2022 and appeared on the next date i.e. 18.07.2022 along with her surety and the matter was adjourned for



20.10.2022 for consideration on bail.

5. Counsel for the Petitioner contends that when the Petitioner returned from USA on 29.02.2020, there was no advisory/directions/guidelines issued by the Government of India mandating home quarantine for passengers travelling from USA. In the Ministry of Health and Family Welfare Advisory issued on 26.02.2020, the Guidelines were only with respect to person returning from few selected countries viz. China, Singapore, Republic of Korea, Islamic Republic of Iran and Italy and did not include USA. Petitioner was never directed by any Authority to undergo quarantine for a period of 14 days either verbally or in writing. Insofar as the FIR under Sections 188/269/270/336 IPC is concerned, learned MM failed to appreciate that no details appear in the FIR indicating the basis for alleging that Petitioner was part of the list enumerating the names of 'quarantined persons'. Insofar as the complaint under Section 195 Cr.P.C. is concerned, it contained totally new allegations, different from those in the FIR. While as per the allegations in the FIR, Petitioner did not quarantine herself at home after returning from USA and there is no allegation that she was found wandering in violation of the Notification/Order on the subject, the complaint refers to an allegation on the Petitioner wandering just for fun. This itself shows the falsity of the allegations and lack of application of mind by the concerned Police Authorities.

6. It is further contended that in order to attract Section 188 IPC, it is essential that the three ingredients are fulfilled: (a) person knowingly disobeys a direction/order promulgated by a public servant to him; (b) such disobedience causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury, to any person lawfully employed;



and (c) such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray. None of the three ingredients are met in the present case. There was no order or advisory by the Government requiring those travelling from USA to quarantine as on 29.02.2020 and no document to so reflect has been filed with the charge sheet. There is no allegation that Petitioner was found wandering so as to cause danger to human life. Petitioner has not disobeyed any order and therefore, the second and third ingredients are not met. There is no report showing that Petitioner was COVID 19 positive or had any such like symptom.

7. The ingredients of Section 269 IPC are also not met inasmuch as Petitioner neither acted negligently or unlawfully and there was no advisory with respect to persons returning from USA and the action alleged is not imputed to have been done with knowledge or belief that it would spread COVID-19 virus. Section 270 IPC is also not attracted since there are no allegations that the Petitioner has done any act malignantly with a *mens rea* or with a knowledge or belief that she was likely to cause and spread infection. There is no rash and negligent act imputed to the Petitioner and therefore, provisions of Section 336 IPC are also not attracted.

8. It is further contended that the case of the Petitioner is covered by judgments of this Court on the issue and in this context, reliance is placed on *Sarmad Ahmed v. State of NCT of Delhi, 2021 SCC OnLine Del 4683* and *Priya Narang v. State of Delhi, CRL.M.C. 1706/2022 decided on 02.05.2023*, where the FIRs were quashed on the ground that retrospective effect cannot be given to an Advisory or a quarantine order.



9. There is substance in the contention of the Petitioner that when the Guidelines/Advisory was issued on 26.02.2020 by the Ministry of Health and Family Welfare, Government of India, in the wake of COVID-19, there were travel restrictions on Indian citizens coming from select few countries viz. China, Singapore etc. but USA was not included in the said Advisory. Therefore, when the Petitioner travelled to India on 29.02.2020 from USA there was no direction or advisory requiring passengers returning from USA to quarantine themselves at home and nor was any lockdown imposed at that point in time. It was only on 22.03.2020 that lockdown was imposed and prohibitory orders were issued from time to time. Therefore, retrospective effect cannot be given to the guidelines/advisories in respect of the Petitioner who admittedly travelled on 29.02.2020 from USA. As rightly contended on behalf of the Petitioner this issue is now covered by two judgments of this Court, as aforementioned. In *Sarmad Ahmed (supra)*, the question that arose before the Court was invocation of quarantine order retrospectively and on that basis alleging violation of quarantine order and registration of FIR. In the said case Petitioner had returned to India on 05.02.2020 from France. Much after, on 12.03.2020 Guidelines were issued in the wake of COVID-19 situation asking people to follow mandatory quarantine norm of 15 days for those travelling to and from China, Italy, Iran, Republic of Korea, France and Germany. The Court held that the Guidelines applicable from 15.02.2020 could not be retrospectively applied to the Petitioner who had entered India on 05.02.2020 and quashed the FIR and proceedings pursuant thereto. To the same effect is the decision in *Priya Narang (supra)* and relevant paragraph is as follows:-



“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.”



10. In view of the aforesaid decisions of the Co-ordinate Benches and the glaring fact that when the Petitioner travelled to India on 29.02.2020 there were no restrictions on person travelling from USA for mandatory quarantine and subsequent advisory/guidelines cannot be retrospectively applied to the Petitioner. There is also merit in the Petitioner's contention that having found that the allegations in the FIR could not be substantiated, a complaint was filed under Section 195 Cr.P.C. taking a new and contradictory stand that Petitioner was found wandering for fun and the entire complexion of the allegations in the FIR has been strangely changed.

11. In view of the facts of this case and the observations of the Co-ordinate Benches, FIR No. 166/2020 dated 06.04.2020 registered at PS: Kishangarh, Delhi; complaint dated 10.03.2021 under Section 195 Cr.P.C.; charge sheet under Sections 188/269/270/336 IPC and order dated 27.11.2021 issuing summons to the Petitioner, are quashed and set aside.

12. Petition stands allowed and disposed of along with pending applications.

JYOTI SINGH, J

NOVEMBER 29, 2023/kd/shivam