

C.R.R. 3023 of 2022

**Amit Chouhan & Ors.
Vs.
State of West Bengal**

Mr. Pronojit Roy,
Mr. Debasis Mitra,
Mr. Arko Mahalanbis,

.... For the petitioners.

Mr. Rana Mukherjee,
Ms. Puspita Saha,

....For the State.

This application has been preferred for quashing of a suo moto complaint lodged against the petitioner and others under Section 188 of the Indian Penal Code and Section 51(b) of the Disaster Management Act, 2005.

Being charge sheeted under Section 188 of the Indian Penal Code and Section 51(b) of the Disaster Management Act in G.R.Ns. No. 33 of 2022 now pending before the learned Metropolitan magistrate, 20th Court Calcutta, it is submitted on behalf of the petitioners that the petitioners have been falsely implicated in the case and there is no document or evidence to be proved by the investigation agency in the instant case, which can attract ingredients of the sections which are being charged against the petitioners. He further argued that vide memo no. 753/XVII-ISS/2M-22/2020 dated 02.1.2022 it was directed that meetings and conferences can be held with maximum number of 200 people at a time or 50% of sitting capacity of hall and also it was directed that at a time not more than 50% persons shall be allowed for any social,

religion or cultural gatherings. Petitioner further submits in the said Government order there was no direction from the State Government for not organizing any protest movement during that period.

Moreover investigating agency did not follow the provisions of law for initiation of proceeding under Section 188 IPC read with 51(b) of the Disaster Management Act, 2005. In fact, there was no gathering or meeting which exceeded number of maximum people allowed as per prevailing Government order and the petitioners assembled peacefully to demonstrate their views about “lock down” and its impact on people at large.

He further argued police case cannot be registered under Sections 188 of the Indian Penal Code. In such case he has to inform about the same to public servant to enable such public servant to lodge complaint in writing before the jurisdictional Magistrate who shall take cognizance of such complaint on being prima facie satisfied with the requirement of Section 188 of the Indian Penal Code. He further submits that the ingredients of Section 188 is conspicuously absent in the present case and as such the continuance of further proceeding before the Court below would be an abuse of process of the Court. The petitioner in this context relied upon a judgement passed by this Court in CRR 1968 of 2022 (Jagdish Chandra & Ors. Vs. State of West Bengal & Anr.).

Learned Counsel appearing on behalf of the State placed the Case Diary and leaves the matter for the discretion of the Court.

I have considered submissions made by both the parties. and also considered the materials in record and it appears that the

petitioners were booked and charge sheeted under Section 188 of the Indian Penal Code read with Section 51 (b) of the Disaster Management Act. In this context it can be said that Section 188 of IPC provides punishment for any person for disobedience of any order promulgated by a public servant lawfully empowered to promulgate such order. Moreover the police case in the present context under Section 188 of IPC is barred under Sections 195(1) (a) (i) of the Cr.P.C in view of Section 2 (d) of Cr.P.C. which states that complaint does not include a police report.

Needless to say that the provisions of Section 195 (i) (a) (i) of Cr.P.C, is mandatory and no Court has jurisdiction to take cognizance of any offence under Section 188 of IPC unless there is a “complaint” in writing as required under that section. In this context reliance has also been placed in the case of *M.S. Ahlawat Vs. State of Haryana* reported in (2000) (1) SCC 278.

Though the accused persons were also booked under Section 51(b) of the Disaster Management Act, 2005 but the materials in case diary does not suggest that they had obstructed any Officer in discharge of his function or they refused to comply with any direction given by the Government. Materials collected during investigation shows that they were hardly fifty in number and they are representative of an organization, who on being resisted by Police to proceed for a rally, shouted slogan opposing lock down. In my view this does not constitute any offence under Section 51(b) of the Disaster Management Act.

In such view of the matter I find continuance of the present proceeding before the Court below would be abuse of process of the Court.

Accordingly the proceeding being G.R.NS No. 33 of 2022 arising out Taltala Police Station case no. 06 of 2022 under Section 188 of the Indian Penal Code read with Section 51(b) of the Disaster Management Act presently pending before the learned Metropolitan Magistrate Court is hereby quashed.

CRR 3023 of 2022 is thus allowed.

Urgent Photostat certified copy of this order, if applied for be supplied upon completion of legal formalities.

(Ajoy Kumar Mukherjee, J.)