

WRIT PETITION NO.4461 OF 2018

- Versus

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by JYOTI
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Mr. S.B.Talekar i/b Talekar & Associates for the Petitioners.

Ms. Manisha Jagtap, for UOI.

Mr. S.V. Gavand, APP for the Respondent-State.

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 28th MARCH, 2024
PRONOUNCED ON : 16th APRIL, 2024**

JUDGMENT:- [PER :- SHYAM C. CHANDAK, J.]

1) By virtue of present Petition filed under Article 226 of the Constitution of India, the Petitioners, who have been arraigned as accused for the offence punishable under Section 188 of the India Penal Code (*I.P.C.* for short) in F.I.R. No.437/2018 registered with Shahupuri Police Station, Satara, seek quashing off said F.I.R.

2) Heard Mr. S.B.Talekar, learned counsel for the Petitioners, Ms. Manisha Jagtap for UOI and Mr. S.V. Gavand, learned A.P.P. for the State. Perused the Record.

3) Rule. Rule made returnable forthwith and with consent of the parties, heard finally.

3.1) Learned counsel for the petitioners, at the outset, on instructions submitted that, the Petitioners are not pressing for the prayer (A) and therefore the prayers (B) and (G) being consequential reliefs, do not survive. Considering the rival submissions, no case is made-out to entertain the prayer (D). The petition therefore survives with respect to prayer clause (c).

4) The impugned F.I.R. has been registered on a report filed by Dhananjay S. Kumbhar, Police Naik, Shahupuri Police Station, Satara wherein it is stated that, the District Magistrate, Satara by his Office Order bearing No.DC/MAG/2/SR/28/2018, Satara, dated 10th September 2018 and 13th September 2018, issued under Section 144 of Cr.P.C., had prohibited the owners and drivers of Dolby Sound System from using the same between 7:00 a.m. of 13th September 2018 till 10:00 a.m. of 24th September 2018, to avoid an ill event during the *Gansh* festival/till the festival. It was also directed that, Dolby machines and related equipment shall be kept in their own custody in sealed condition. This Order was notified to the Petitioner No.1, serving upon him a notice under Section 149 of Cr.P.C. However, on 23rd September 2018, at about 1:00 a.m., at Karanje Peth, Satara, three vehicles, driven by Petitioner Nos.2 to 4 were found carrying Dolby System base and top, at instance of Petitioner No.1. The said music system/material was belonging to Petitioner No.1 and intended to be carried at some place to use the same. Thus, the Petitioners have disobeyed the said Order of District Magistrate and committed the offence under Section 188 of I.P.C.

5) Mr. Talekar, learned counsel for the Petitioners submitted that, even though various grounds are raised to challenge the legality of the F.I.R., Petitioners are relying on only one ground that, the offence under

Section 188 is not cognizable by the Police but only on the complaint filed by the public servant concerned. The impugned F.I.R., has been registered in breach of said mandate of the Cr.P.C. Therefore, said F.I.R. is illegal.

6) Ms.Jagtap and Mr. Gavand, learned A.P.P. submitted that, there is no illegality or perversity in the process adopted by the police for registration of the crime against the Petitioners, thus opposed the Petition.

7) Section 188 of I.P.C. is cognizable, bailable and triable by a Judicial Magistrate. Said Section 188 of I.P.C. reads thus:

***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 person 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.*

8) In the case in hand, the said Order issued under Section 144 of Cr.P.C. by the District Magistrate was not promulgated, but communicated to the Petitioner No.1 by serving upon him a notice under Section 149 of

Cr.P.C., privately. As held by this Court in Criminal Application No.670 of 2014, decided on 10th November 2023, the disobedience of such notice under Section 149 of Cr.P.C. may attract other offences under I.P.C., however, the same does not constitute an Order duly promulgated within the meaning of Section 188 of I.P.C. As such the offence alleged under Section 188 of I.P.C. was clearly not attracted. To this extent, the facts of this decided case are similar to the case in hand.

9) The provisions of Section 195(1)(a) of Cr.P.C regulate the competence of the Court and bars the taking of cognizance except in compliance thereof. Section 195 (1)(a) of Cr.P.C reads as under:-

(1) No Court shall take cognizance--

(a) (i) of any offence punishable under sections 172 to 188

(both inclusive) of Indian Penal Code (45 of 1860), or

(ii) of any abatement of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

9.1) Plane reading of Section 195 of Cr.P.C. makes it evident that, it places an embargo on the power of the Court to take cognizance of an offence under Section 188 of I.P.C. except on a complaint in writing of the public servant concerned. The expression 'Complaint' is defined under Section 2 (d) of Cr.P.C. and 'Police Report' under Section 2 (r) thereof. Said

definitions read as under:

2 (d) “Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

2 (r) “Police Report” means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;

10) In the case in hand, admittedly there is no written complaint by the competent public servant and the provisions of Section 154 of Cr.P.C. have been invoked to register the said crime and investigate on the report filed by the informant, Police Naik. This method of filing a report of said offence and registration of the crime by police is not equal to filing a complaint of said offence as envisaged in Section 195 (1)(a)(i) of Cr.P.C.

10.1) The case of *Shrinath Gangadhar Giram vs. The State Of Maharashtra*, 2018 All MR (Cri) 325, faced a similar situation as a police personnel had filed the F.I.R. alleging commission of offence under Section 188 of I.P.C., for disobedience of the order of the District Magistrate. Therefore, this Court held that, “*On conjoin reading of the provision of Section 188 of IPC and Section 195 of Cr.P.C., it is evident that if the alleged offence is punishable under Sections 172 to 188 of IPC, the Court cannot take cognizance except on a complaint in writing of the public servant concerned, or some other public servant, to whom he is administratively a subordinate. In such peculiar circumstances, no F.I.R. could have been*

registered by the police for an offence punishable under Section 188 of IPC. The legislative intention appears to be clear from the language of section 195 (1) of Cr.P.C. itself, which categorically prescribes that where an offence is committed under Section 188 of IPC, it would be obligatory for the public servant before whom such offence is committed, to file a complaint before the concerned Magistrate having jurisdiction to take cognizance of it. Therefore, in view of the aforesaid principles of law, the F.I.R. given by the police personnel in the police station, cannot be termed as a “complaint” given to the Magistrate in writing.”

11) Conspectus of the aforesaid discussion is that, the notice issued to Petitioner No.1 under Section 149 of the Cr.P.C. does not constitute an Order duly promulgated within the meaning of Section 188 of the IPC. Secondly, the impugned F.I.R. filed by the Police personnel in the Police Station cannot be rated as “Complaint” in writing as prescribed in Section 195(1)(a) of the Cr.P.C. given to a Judicial Magistrate.

11.1) In the above premise, the impugned F.I.R. is nothing but an abuse of process of law. Therefore, the said F.I.R. is liable to be quashed and is accordingly quashed and set aside.

11.2) Criminal Writ Petition is allowed in terms of prayer clause (c), accordingly. Rule is made absolute in the above terms.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)