

2024:PHHC:172571



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

116

**CRM M-5342 of 2024
Date of Decision: 17.12.2024**

Manmeet Kaur ...Petitioner
Versus
The State of UT Chandigarh ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Mayank Sharma, Advocate, for the petitioner.
Mr. Akashdeep Singh, Spl. P.P., U.T., Chandigarh.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of Cr.P.C. with a prayer to quash the impugned FIR No. 96 dated 03.12.2021 under Sections 269 IPC and Section 51 of Disaster Management Act, 2005, Police Station Sector 49, Chandigarh (Annexure P-3) and all consequential proceedings arising therefrom.
2. Learned counsel for the petitioner contends that the petitioner is employed as an international civil servant with the United Nations for the last several years and is presently posted in Thailand where she looks after the affairs of United Nations World Food Programme. On 29.11.2021, the petitioner had to travel from Johannesburg (South Africa) to India for her winter holidays and as such she has departed from there on the same day. Due to outbreak of

Covid 19 Pandemic, no direct flights to India were available and the petitioner had to change several flights from different countries, before she finally landed at IGI Airport, Delhi in the early hours of 01.12.2021. The petitioner was required to get the Covid RT-PCR test conducted before entering and before leaving every country's airport, where she had to transit before reaching India. During this period, the petitioner had consistently tested negative in each Covid RT-PCR test. Due to her transfer from South Africa to India, when the petitioner landed at Delhi, no Covid RT-PCR test was conducted by the airport authorities. She was only informed by the authorities that she was required to self monitor herself for any symptoms of Covid-19 infection and no directions were issued to quarantine herself at her home. Learned counsel further contends that on 01.12.2021, the petitioner boarded another flight to Chandigarh and reached there. She again informed the authorities regarding the directions of self monitoring, which were given to her by the concerned authorities at IGI Airport Delhi. Again, no Covid RT-PCR test was conducted on the petitioner at the airport in Mohali. She was made to sign an undertaking, wherein, she was asked to circle the option of self monitoring in accordance to the directions received by the petitioner from the authorities at IGI Airport, Delhi. The petitioner was not provided the copy of the said undertaking. Again she got herself tested for Covid 19 and she was tested negative. She informed the authorities that she intended to stay in Chandigarh only for a few days

and also wanted to check into a hotel after a brief visit to her parents. She informed the health officials that she had opted for self monitoring of the health and on 02nd December 2021, the Covid RT-PCR test results of the petitioner were declared to be negative. She was under the bonafide impression that she was only to do the self monitoring of her health and she checked into a hotel. Even, at no stage, any airport/health officials had directed the petitioner to quarantine herself for any period of time. Even, she was already tested negative repeatedly and on 02nd December 2021, she went out of her hotel to take dinner. At that stage, the petitioner was informed by health authorities that she had to quarantine herself for a period of 08 days. On the next day, i.e., 03rd December 2021, they came to the hotel and quarantined the petitioner in the general ward of Government Hospital, Sector 16 Chandigarh and the present FIR (Annexure P-3) was ordered to be registered against the petitioner. On 08th December 2021, again the test was conducted for checking the infection of Covid-19 and the result was again declared to be negative. Consequently, the petitioner was released from the hospital.

3. Learned counsel further contends that now without any material, the challan has been wrongly presented against her. Even no offence under Section 269 IPC is made out against the petitioner as she had never been declared as a carrier of any disease at any point of time and there was no question of spreading any deadly disease any

further prior to the registration of the FIR. He further contends that the petitioner was not suffering from any infection or infectious or contagious disease at any point of time, which is evident from the various RT-PCR test reports and the ingredients of Section 269 IPC were completely missing in the instant case. Even, the prosecution could not produce or collect any evidence against the petitioner to show that the petitioner was likely to spread the infection of any disease. Even multiple times, the petitioner had undergone RT-PCR tests in order to ascertain that she was Covid-19 negative and by believing that she was not likely to spread the Covid-19 infection, she checked in a hotel. Further, there was no violation of Section 51 of the Disaster Management Act, 2005 as the authorities at both the airports never directed or informed her about the latest regulations and she was merely directed to self-monitor her health for 14 days and not to quarantine herself in her house. Learned counsel further contends that even no cognizance could be taken against the petitioner by the Court under Section 51 of the Disaster Management Act, 2005 as the said offence invited disobedience of regulations or order made under the Act and in case of any such disobedience, the presumption was that the petitioner had committed an offence under Section 188 of IPC, which further required the mandatory compliance of provisions of Section 195 Cr.P.C. However, admittedly, in the present case, Section 195 of Cr.P.C. was not complied. Thus, the FIR and all subsequent proceedings arising therefrom are liable to be quashed by this Court.

4. On the other hand, learned State counsel has vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner had violated Covid protocol, which was issued by the Chairman, District Disaster Management Authority, Chandigarh, in respect of international travelers from high risk countries, which included South Africa. The guidelines were issued by the Ministry of Health and Family Welfare, Government of India, w.e.f. 01.12.2021 and as per the said guidelines, the travelers from specified countries at risk would be tested at the arrival airport and if they are tested negatives, they will have to follow home quarantine for 07 days. The petitioner had broken the protocol and checked into a hotel on 02.12.2021. Even, she had given an undertaking that she would undergo home quarantine for 07 days at her address, still, she left her home voluntarily and went to a hotel on 02.12.2021.

5. I have heard learned counsel for the parties and perused the record.

6. The present petitioner in the present case has been ordered to be prosecuted under Section 269 IPC and the said provision reads as under:-

“269. Negligent act likely to spread infection of disease dangerous to life.--Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with

imprisonment of either description for a term which may extend to six months, or with fine, or with both.

7. To attract ingredients of Sections 269 IPC, the person must commit such negligent act, which is likely to spread infection of disease, which is dangerous to life. In the present case, the petitioner had traveled from South Africa to India and while entering the leaving the airports in transit, she had undergone RT-PCR test for checking of Covid 19 infection and was never declared Covid-19 positive at any airport by any health authority of any country. Even, in India, she had undergone RT-PCR tests and was declared negative for the presence of the said disease. During the course of investigation, the prosecution could not find any evidence to prove that either the petitioner was suffering from some infection or infectious or contagious disease and or was responsible for committing an act, which was likely to spread the infection of a disease, which was dangerous to life. From the material produced in the charge sheet, there was no evidence to substantiate the fulfillment of the ingredients of the offence under Section 269 IPC.

8. Section 51 of the Disaster Management Act 2005 is a punitive provision and reads as under:-

"51. Punishment for obstruction, etc.-- *Whoever, without reasonable cause-*

(a) obstructs any officer or employee of the Central Government or the State Government, or a person

authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act, or

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years”.

9. Section 3 of the Epidemic Disease Act, 1897 reads as under:-

Section.3. Penalty. *Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860)."*

10. From the above referred provisions of law, it is apparent that the disobedience of the provisions of the Disaster Management Act, 2005 is always construed as commission of an offence under Section 188 of Indian Penal Code. In the present case, there are allegations that the petitioner had violated the provisions of the Disaster Management Act, 2005 and which shall be deemed to be an offence punishable under Section 188 of IPP. Section 188 of IPC reads as under:-

"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.

Explanation- *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."*

11. The ingredients of the offence under Section 188 of Indian Penal Code are as follows:-

- (1) There was promulgation of an order by a public servant lawfully empowered to promulgate such order;*
- (2) Such order directed the accused to abstain from a certain act or to take certain order with certain property in his possession or under his management;*

(3) The accused was aware of such order;

(4) He disobeyed such order;

(5) Such disobedience caused or tended to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed or such disobedience caused or tended to cause danger to human life, health or safety, or a riot or affray”.

12. Section 188 of the Indian Penal Code deals with disobedience to orders duly promulgated by the public servant. The offence, as already stated, is allegedly disobedience to the orders duly promulgated by the Collector. Section 195 of the Code lays down that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code, except on the complaint in writing to the public servant concerned or of some other public servant to whom he is administratively subordinate. In the present case, there is no complaint filed by Collector or his subordinate officer. The Sub-Inspector of Police has filed the charge-sheet. In ***Daulat Ram v. State of Punjab [AIR 1962 SC 1206]***, the Hon'ble Supreme Court held that the prosecution under Section 182 of the Indian Penal Code must be on a complaint in writing by the Tahsildar (public servant). In view of absolute bar against the Courts for taking cognizance of the offence punishable under Section 182 of the Indian Penal Code, except in the manner provided by Section 195 of the Code, the said judgment equally applies to the offence under Section 188 also. In the present case, there is no complaint in writing

by the public servant concerned or by some other public servant to whom he is administratively subordinate. Therefore, in view of the bar under Section 195(1)(a) of the Code, the learned Magistrate ought not to have taken cognizance of the offence punishable under Section 188 Indian Penal Code on the report submitted by the Sub-Inspector of Police. Therefore, I am of the considered view that the cognizance is taken contrary to the specific bar envisaged under Section 195(1)(a) of the Code. In ***M.S. Ahlawat v. State of Haryana [2000(1) SCC 278]***, the Hon'ble Supreme Court considered the provisions prescribed under Section 195 of the Code at length and observed in paragraph 5 as under:

"5.... Provisions of section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section."

13. In view of the above discussion, it is apparent that the prosecution could not have been launched against the petitioner under Section 188 of IPC, based on a challan submitted by the police for an offence punishable under Section 188 of IPC. Even, as per Section 195(1) of Cr.P.C., the complaint could be filed only by the Secretary, Ministry of Health and Family Welfare, Government of India, or any other officer superior to him as it was alleged by the prosecution that the petitioner had allegedly violated the notification issued by him. The mandate of Section 195(1) of Cr.P.C. clearly prescribes that

where an offence is committed under Section 188 of the Indian Penal Code, a complaint could only be maintainable only by the concerned public servant before whom such an offence was committed or by any superior officer and such complaint should be filed before the Area Magistrate either orally or in writing. Consequently, even the FIR against the petitioner was not maintainable and is liable to be quashed by this Court.

14. The Hon'ble Supreme Court of India has held in the matter of ***State of Haryana Vs. Bhajan Lal (1992 Supp (1) SCC 335)*** while laying down the guidelines to be followed by the High Court in exercise of their inherent powers, which govern the quashing of a FIR as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. In view of the above discussion, this Court is of the considered opinion that allowing of the prosecution of the petitioner would be nothing but an abuse of the process of the Court. Resultantly, the present petition is allowed and the FIR No. 96 dated 03.12.2021 under Sections 269 IPC and Section 51 of Disaster Management Act, 2005, Police Station Sector 49, Chandigarh (Annexure P-3) and all consequential proceedings arising therefrom are ordered to be quashed qua the petitioner.

17.12.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No