

CRM-M-54479-2023

PHHC:

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

CRM-M-54479-2023

Reserved on: 09.02.2024

Pronounced on: 14.02.2024

MANDEEP PAL SINGH**.....Petitioner****Vs****STATE OF PUNJAB AND ANOTHER****....Respondent(s)****CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA**

Present: Mr. Sandeep K. Sharma, Advocate
for the petitioner.

Mr. Gurlal Singh Dhillon, Assistant Advocate General, Haryana.

HARKESH MANUJA, J.

By way of present petition filed under 482 Criminal Procedure Code, 1973 (hereinafter referred to as "CrPC") petitioner prayed for quashing of FIR No 0074 dated 04.05.2020 under Sections 188, 269, 270, 271 of Indian Penal Code, 1860 (hereinafter referred to as "IPC"), Section 3 of Epidemic Diseases Act, 1987 (hereinafter referred to as "1987 Act") and Section 51 of Disaster Management Act, 2005 (hereinafter referred to as "2005 Act") registered at Police Station Navi Baradri, District Jalandhar and charges framed there under by Learned Trial Court vide order dated 09.02.2022 and all the subsequent proceedings arising out of the FIR.

[2] The present FIR was registered on the statement of ASI Gurdial Singh which reads as under: -

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“Station House officer, Police Station Navi Baradri “Jai Hind” Today I ASI alongalong with C-II Prabhdeep Singh 2815, CT Shavinderpal Singh 2829 were doing patrolling in private car in order to maintain law and order and in pursuance to order passed by Deputy Commissioner bearing Order No. 3062-85/MC-4/MA dated 23.03.2020 regarding COVID-19 pandemic and order of curfew under section 144 vide order dated 23.03.2020 till next order, were present at Ladowal Road. Information was received by Head Munshi that last night near Kapil Hospital, one Brezza Car No. PB08-EE-7788 white colour got hit with Electricity Pole and appropriate proceedings should be done after reaching at the spot. On which I ASI along with other officials reached at the spot near the car bearing No. PB08-EE-7788 MarutiBrezza whitecolour, one person was standing and I ASI asked his name and address, who told his name Mandeep Pal Singh (Advocate) \$/ Sh. Gyan Singh resident of House No. 218 Urban Estate Phase-1 Jalandhar. I ASI asked about Curfew Pass from him regarding roaming out and he did not produce any Curfew Pass neither stated any valid reason. Mandeep Pal Singh who is advocate by profession and well versed with law and order and who despite of Covid pandemic without any curfew pass roaming around negligently. Due to which there is likelihood of spreading of virus of Covid 19 and also danger for others. Despite of well-versed with the law and order and violated the order under section 144 passed by Deputy Commissioner, Jalandhar. He has committed the offence under sections 188, 269, 270, 271 IPC and 3 Epidemic Diseases Act and 51 of Disaster Management Act. Ruqa was written and sent to the police station through CT Shavinderpal Singh 2829. FIR should be registered and number be informed. Officers and Control Room should be informed. I ASI along with other officials present at the spot for investigation. Sd/- Gurdial Singh ASI PS Navi Baradri, Jalandhar dated 04.05.2020. Today BahadRakba Sant Nagar Railway Gate to Road Chowk Jalandhar at 12:00PM. Today Police Station: The above mentioned complaint on being receiving at the police station for registration of FIR and copy of original complaint along with FIR being sent at the spot for further investigation through CT Arinda ASI designated ASI.

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Officers and Control Room was informed through Telephone.”

[3] Learned Counsel appearing on behalf of the petitioner contended that in the present case the petitioner after being discharged of offence under Section 188 IPC by Learned Trial Court vide order dated 04.01.2022; the order of Trial Court dated 09.02.2022, whereby charges were framed qua petitioner under Section 3 of 1987 Act and Section 51 of 2005 Act and Sections 269, 270 and 271 of IPC is not good in law and the same is liable to be set aside. The petitioner had challenged this order dated 09.02.2022 before Learned Additional Session Judge, Jalandhar in CRR-44-2022, however, the same was withdrawn in order to avail appropriate remedy. Thus, the present petition.

Learned counsel for the petitioner submitted that the petitioner was implicated in the FIR(supra) when he was found standing near one white colour Brezza Car bearing registration no PB 08 EE 7788 on 04.05.2020 in contravention of curfew imposed by an order dated 23.03.2020, passed by the Deputy Commissioner, Jalandhar dated 23.03.2020 imposing Section 144 CrPC till further orders in view of COVID-19 pandemic.

He even further submitted that offence under Sections 269, 270, 271 of IPC also not made out against the petitioner as Investigating Agency failed to get his medical examination done so as to ascertain if he was suffering from any communicable/infectious disease or not.

[4] On the other hand, learned State Counsel vehemently opposed the prayer made by the counsel for the petitioner while submitting that the himself being an Advocate was fully aware of imposition of curfew under Section 144 CrPC under the order of District Magistrate and had shown willful neglect of authority and posed danger to the society in wake of unprecedented conditions of COVID-19 prevalent at the time.

[5] I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made by learned counsel for the petitioner.

[6] Discussion regarding alleged offence committed under Sections 269, 270 and 271 of IPC has to be done after examining those provisions and same are reproduced 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.

270. Malignant act likely to spread infection of disease dangerous to life. - Whoever maliciously 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 two years, or with fine, or with both.

271. Disobedience to Quarantine Rule - Whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, for regulating the intercourse between places where an

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infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

[7] A perusal of record shows that petitioner was never medically examined by Investigating Agency during investigation so as to find out that if he was suffering from any communicable/infectious disease and in absence thereof it cannot be assumed that petitioner was either a carrier of infection/disease or would have caused spread of any communicable/infectious disease dangerous to life. A bare reading of Sections 269, 270 and 271 of IPC show that the act of accused must be one which is likely to spread infection of any disease dangerous to life and in the present case lack of medical examination of the petitioner was fatal.

[8] This Court in case of **Pawan Giri and others Vs State of Haryana, CRM-M-51595 of 2021** while dealing with the similar issued held that in the absence of medical test it cannot be assumed that a person is a carrier and would spread a disease dangerous to life of others and thus such person cannot be said to have committed an act punishable under Section 269 of IPC. Relevant paragraph is reproduced as under: -

"10. A perusal of Section 269 IPC shows that in order to attract the same, the act of an accused must be one which is likely to spread infection of any disease dangerous to life. A perusal of the report filed by respondent under Section 173 Cr.P.C. does not indicate any prima facie evidence collected by the Police as to whether the petitioner or the other members of the family were suffering from any infectious disease or would have caused spread of any infectious disease. In the absence thereof, it cannot be assumed that the petitioners were either the carriers of infection or would have caused

spread thereof. Apart therefrom, the report also does not indicate the exact guideline purportedly alleged to have been violated. In the absence of any such specific guidelines which is alleged to have been violated, there is no presumption that the act of the petitioners was unlawful. Further, perusal of the notification dated 01.04.2020 shows that the said notification was in the nature of a prohibition imposed upon the shops selling medicines and was not against other person. Hence, the action of the petitioners in seeking procurement of essential medicines during the permissible hours of operation cannot be held to be unlawful. In the absence of the respondents to refer to any order, the disobedience whereof is sought to be alleged against the petitioners, it cannot be perceived that the petitioners have committed an offence under Section 269 IPC.”

[9] This court in another case of **Parminder Singh @ Tinku vs State of Punjab, 2023(2) Law Herald 1571**, again held that in the absence of medical test to ascertain whether a person carries a communicable/infectious disease or not, such person cannot be prosecuted under Sections 269 and 270 of IPC. Relevant paragraph is reproduced as under: -

“.....While invoking any of these two provisions against any person, there must be some material to suggest that his actions were likely to spread infection of a dangerous disease as noted in Zubair's case (supra) as well, relevant part of which is reproduced below:

"In order to bring home the charges under Sections 269 and 270 of Indian Penal Code, the prosecution is required to prove the ingredients of the offence therein to show that the person has committed any act which his move is likely to spread infection of any disease which is dangerous to life. There is no case laid before this Court that the petitioner was suffering from COVID 19 positive and was

wandering in and around the neighbouring area or in the locality in violation of the regulation relating to lockdown due to pandemic situation which cropped up due to COVID 19. Hence, this Court does not prima facie, even find any ingredients of the offence punishable under Sections 269 and 270 of the Indian Penal Code. "

Similar observations were also made by this court in Pawan Giri's case (supra) as well which is reproduced below:

"10. A perusal of Section 269 IPC shows that in order to attract the same, the act of an accused must be one which is likely to spread infection of any disease dangerous to life. A perusal of the report filed by respondent under Section 173 Cr.P.C. does not indicate any prima facie evidence collected by the Police as to whether the petitioner or the other members of the family were suffering from any infectious disease or would have caused spread of any infectious disease. In the absence thereof, it cannot be assumed that the petitioners were either the carriers of infection or would have caused spread thereof. Apart therefrom, the report also does not indicate the exact guideline purportedly alleged to have been violated. In the absence of any such specific guidelines which s alleged to have been violated, there is no presumption that the act of the petitioners was unlawful."

If we apply the ratio of above-mentioned judgments in the present case, we can notice that in this case also no Covid-19 test of the petitioner was conducted to show that he was infected from the virus. It has also not been mentioned in the FIR that which specific guideline was violated by the petitioner. Even otherwise the only allegation which appears to be made against the petitioner is that he was not wearing a mask, though it has been denied by the petitioner on affidavit. Additionally, no specific circumstance has been specified herein to show the specific circumstance in this case to register an FIR when in general only fine was to be paid

on account of this negligence. Therefore, charges under section 269, 270, IPC also cannot stand.”

[10] Now coming to the question whether the petitioner can be prosecuted under Section 3 of 1987 Act and 51 of 2005 Act. Let's examine these provisions which are reproduced as under: -

“1987 Act

Section 3. Penalty.—

(1)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). (2)Whoever,—(i)commits or abets the commission of an act of violence against a healthcare service personnel; or(ii)abets or causes damage or loss to any property, shall be punished with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees. (3)Whoever, while committing an act of violence against a healthcare service personnel, causes grievous hurt as defined in section 320 of the Indian Penal Code to such person, shall be punished with imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine, which shall not be less than one lakh rupees, but which may extend to five lakh rupees.”

2005 Act

Section 51. Punishment for obstruction, etc .-(1) 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.”

[11] A bare reading of these provisions infer that these relate to offences charged under Section 188 of IPC and obstruction of government employee while discharging official duty. In the present case the petitioner cannot be said to have caused any obstruction in official duty being performed by Police as he submitted himself to police upon being asked about his purpose of standing near the car during curfew, as evident from FIR(supra). Also, the petitioner was discharged of offence under Section 188 IPC by Learned Trial Court vide order dated 04.01.2022. Thus, petitioner ought not to be prosecuted under Section 3 of 1987 Act and 51 of 2005 Act.

[12] In view of the discussion made herein above, this petition is **allowed** and FIR No 0074 dated 04.05.2020 and the charges framed qua the petitioner by Learned Trial Court vide its order dated 09.02.2022 and all consequential proceedings arising therefrom are hereby **quashed**.

[13] Pending miscellaneous application(s) if any, shall also stand disposed of.

February 14 , 2024
Tejwinder

(HARKESH MANUJA)
JUDGE

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

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Mr. Siddharth Sandhu, AAG, Punjab.