



2024:DHC:867



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 02.02.2024
Pronounced on: 07.02.2024

+ CRL.M.C. 1741/2022 & CRL.M.A. 7394/2022

SHABNAM HASHMI Petitioner
Through: Mr.Soutik Banerjee &
Ms.Devika Tulsiani, Advs.
versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr.Aman Usman, APP with SI
Mamta

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') praying for quashing of the order dated 08.10.2021 passed by the learned Metropolitan Magistrate-04, Dwarka Court, New Delhi (hereinafter referred to as the 'Metropolitan Magistrate') in Criminal Case No. 5612/2021 titled *State v. Shabnam Hashmi*, and all consequential proceedings emanating therefrom.

2. The above Criminal Case has been registered on the charge-sheet filed against the petitioner in FIR No. 0222/2020 registered at Police Station, Dwarka South, Delhi under Section 188 of the Indian Penal Code, 1860 (in short, 'IPC'). The said FIR has been registered by the Duty Officer, Police Station Dwarka South, stating that on 03.06.2020, he was called by the SHO to his office and was told that



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on the social media site Twitter, a video was being played in which the petitioner and others are seen protesting. He was instructed that the same be checked and proceedings in accordance with the law be taken. The Duty Officer further states that he checked the said Tweets on Twitter and found that the same has been posted by a handle in the name of @Shabnam Hashmi on 03.06.2020 at 17:10hrs containing a video which, on local inquiry, was found to be made at DDA park near the Presidium School, Sector-06, Dwarka, New Delhi, and in which 8 to 10 people are found walking with one banner against the Citizen Amendment Act (in short, 'CAA'). At the end of all these persons was the petitioner herein, found holding the banner. The petitioner stays in Sector-6 Dwarka and calls herself a social activist. The above-mentioned Twitter handle also belongs to her. It was alleged that as all these persons had violated the Prohibitory Order No. 5250-5339/R-ACP Dwarka dated 01.06.2020 issued under Section 144 of the CrPC by the Assistant Commissioner of Police (in short, 'ACP') Dwarka, they have committed an offence under Section 188 of the IPC.

3. Upon investigation, a Final Report under Section 173 CrPC was filed before the Court of the learned Metropolitan Magistrate on 04.05.2021. On the said charge-sheet, the learned Metropolitan Magistrate took cognizance vide the Impugned Order dated 08.10.2021, which reads as under:-

"I have gone through the charge-sheet and there are sufficient material on record to proceed against the accused, hence, I take



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cognizance of the offence committed against the accused.

Let summons be issued to the accused to be served through IO for NDOH.

List for 09.02.2022.”

Submissions by the learned counsel for the petitioner

4. The learned counsel for the petitioner submits that in terms of Section 195 CrPC, cognizance for an offence under Section 188 of the CrPC can be taken only on a complaint in writing of the Public Servant concerned or of some other Public Servant to whom he is administratively subordinate. Cognizance cannot be taken of the Final Report.

5. He submits that in the present case, the Final Report contains a document dated 24.04.2021 purporting itself to be ‘*permission under Section 195 CrPC*’ issued by the ACP, Sub-Division Dwarka, New Delhi. The same, however, cannot be considered as a complaint under Section 195 CrPC and, therefore, the Impugned Order taking cognizance on the Final Report is liable to be set aside. In support, he places reliance on the judgment of this Court in *Vasudev v. State*, 1984 SCC OnLine Del 233; and *Santokh Singh Chawla v. State NCT of Delhi*, 2023 SCC OnLine Del 4773.

Submissions by the learned counsel for the respondent

6. On the other hand, the learned counsel for the respondent submits that the learned Metropolitan Magistrate can take cognizance not only of the Final Report, but also of the document attached thereto. In the present case, there is a document dated 24.04.2021 titled ‘*permission under Section 195 CrPC*’ from the ACP filed along



with the Final Report, which would satisfy the requirement of a complaint under Section 195 CrPC. He submits that cognizance has, therefore, rightly been taken by the learned Metropolitan Magistrate treating this to be the complaint, and no fault can be found in the order dated 08.10.2021 passed by the learned Metropolitan Magistrate. In support, he places reliance on the judgment of this Court in ***Decathlon Sports India Pvt. Ltd. v. State of NCT of Delhi***, 2022 SCC OnLine Del 2357.

Analysis & Finding

7. I have considered the submissions made by the learned counsels for the parties.

8. Sub-Section (1) of Section 195 CrPC reads as under:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or 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;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or



(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or
(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),
except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.”

9. A reading of the above would show that a Court can take cognizance of any offence punishable under Section 188 of the IPC only on the complaint in writing of the Public Servant concerned or some other Public Servant to whom he is administratively subordinate.
10. In **Vasudev** (Supra), this Court, under similar circumstances as in the present case, held as under:-

“6. Proceedings for an offence under Section 186 IPC could have been set into, motion if there had been a formal complaint lodged with the court concerned, by the public servant who had been obstructed in the discharge of his public duties, or against whom an offence had been committed. Without such complaint, the court could not have taken seisin of the case. In fact, there was an absolute bar in terms of the language used in Section 195 Cr. P.C. (See in this regard Daulat Ram v. State of Punjab, A.I.R. 1962 Supreme Court 1206).

Much has been sought to be made out from the side of the State to a writing attached with the challan signed by one Sh. S.K. Mehra, Joint Director (P.F.A.) It is mentioned as a complaint under Section 195 Cr. P.C. The



name of the court of Ms. Aruna Suresh is also mentioned. After narration of the facts of the case, it has been stated in this writing that a written complaint was made to the S.H.O. Lahori Gate police station on which F.I.R. No. 789 was registered. It was next stated that the investigation had been completed, and the two accused out under arrest, and the case had been registered under Section 186 IPC. There was no specific prayer made in this writing except that the writer should be exempt from personal appearance being busy in his official duties. This writing though captioned as a complaint under Section 195 Cr. P.C., hardly fits in with the requirements of a complaint. From a public servant of the position of S.D.M., it could have been least expected that he would have looked into the provisions of the Code of Criminal Procedure and ensured that the requirements of a formal complaint were fulfilled and complied with. Moreover, such complaint should have been addressed to the court concerned. It could not have been handed over to the S.H.O., nor the S.H.O. just could have made it a part of the challan which he was submitting in the court. In fact, it was the challan on which he sought trial, and the trial court too has commenced trial on the basis of that challan. At no stage the trial court is shown to have taken cognizance of this complaint.”

11. Again, in **Santokh Singh Chawla** (Supra), another learned Single Judge of this Court, on a detailed analysis of Section 195 CrPC and the precedents governing the same, has held as under:-

“13. Thus, it is evident from a bare reading of the statute as well as judicial precedents that for offences punishable under Section 186/188 of IPC, the Court is barred from taking cognizance unless a written complaint is made as per the mandate of Section 195(1)(a)(i) of Cr.P.C. by the concerned individual/authority.



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iii. Registration of FIR and Investigation by Police not barred under Section 195 Cr. P.C.

14. There is also no dispute on the proposition that the bar under Section 195 Cr. P.C. exists only in relation to taking cognizance by Courts, and not upon registration of an FIR and the investigation by the police thereto.

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16. Therefore, to sum up, as per mandate of Section 195 Cr. P.C., there has to be a complaint in writing made by the concerned public servant to the Court so as to enable the Court concerned to take cognizance of offence under Section 188 of IPC.

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24. As observed in preceding discussion, there was no illegality or infirmity in getting the present FIR registered and the subsequent investigation by the police. However the concerned public servant in the present case should have prepared a complaint as envisaged under Section 195 Cr. P.C. containing the allegations against the petitioner and the material that was brought on record during the course of investigation by the police, and the same should have been filed before the learned Magistrate or the same could have forwarded along with the chargesheet to the Court concerned.

25. In the present case, the aforesaid course was not followed by the concerned public servants. Thus, the cognizance as taken by the learned Magistrate on the basis of chargesheet was bad in law.

26. Accordingly, the order dated 08.02.2021 passed by 2021 passed by learned Metropolitan Magistrate-10, Dwarka Courts, New Delhi in Cr. Case 7950/2020 taking cognizance of chargesheet is set aside."



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12. The present petition presents similar facts as the above cases. In the present case also, the FIR was registered alleging violation of the Prohibitory Order No. 5250-5339/R-ACP Dwarka dated 01.06.2020 issued under Section 144 of the CrPC by the ACP Dwarka. However, on completion of investigation, instead of filing a complaint in terms of Section 195 CrPC, the Final Report was filed before the learned Metropolitan Magistrate, and the learned Metropolitan Magistrate vide order dated 08.10.2021, took cognizance of this Final Report. The same was clearly impermissible in terms of Section 195 CrPC and the law as had been explained by the above referred judgments.

13. The reliance of the prosecution on the “*permission under Section 195 CrPC*” dated 24.04.2021 issued by the ACP is also ill-founded. The said permission letter reads as under:-

“The Brief facts of the case is that on 03-06-2020 SHO/Dwarka-South directed SI-Rakesh Kumar that a twit is trending on Twitter Social Media Platform, in which Ms. Shabnam Hashmi along with other persons is being seen to protest, suitable legal action taken against her. After this IO/SI-Rakesh Kumar checked and verified the trending twit and found that this twit was twitted on 03-06-2020 at 17:10 Hrs from the verified twitter handle of Ms. Shabnam Hashami, a social activist. Local enquiry regarding protest was made place of protest was done and found that the said video of protest was made on 03-06-2020 in DDA Park, near presidium School, Sec-6, Dwarka, 8-10 persons were seen with carrying a banner and in the last Ms. Shabnam Hashami R/o-Sec-6, Dwarka was also seen with carrying a banner.

Due to pandemic of Covid-19, all type of protest and gathering of 5 or more persons was banned by ACP/Dwarka vide its rder No.



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5250- 5339/R/ACP/Dwarka Dated New Delhi the 01-06-2020. Thus Ms.Shabnam Hashmi has violated the lawful order of ACP/Dwarka. According a Case FIR No.222/2020 U/s 188 IPC Dated 03-06-2020 was registered in PS-Dwarka- South.

Now Therefore, I Sunil Kumar Singh, Assistant Commissioner of Police, Sub Division Dwarka, Dwarka District, hare by make this **permission** U/s-195 Cr.P.C. for prosecution of the above named Accused person in the aforesaid case.

However due to pre occupation in official duties. I may here be exempted from personal appearance in the Court and Ld. APP attached to the Hon'ble Court may be permitted to pursue the case in lieu of undersigned.”

(Emphasis supplied)

14. A reading of the above would clearly show that the above document is not a Complaint as defined by Section 2(d) CrPC. It was, in fact, in the nature of a permission given by the ACP for prosecution of the petitioner and for seeking exemption from his own personal appearance in the Court. Similar letters have been considered by this Court in the above-referred judgments of **Vasudev** (Supra) and **Santokh Singh Chawla** (Supra) and it has been held that the same does not satisfy the test of being a Complaint under Section 195 CrPC. I may only herein quote from the judgment in **Santokh Singh Chawla**. (Supra) as under:-

“18. In reply to the aforesaid request seeking complaint under Section 195 Cr. P.C., the concerned public servant had informed that a complaint had already been lodged at P.S. Kapashera by their office regarding illegal construction activity in lockdown period on the basis of which the present FIR



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was registered. Thus, it was requested that this complaint be filed under Section 195 Cr. P.C. to prosecute the petitioner. This letter was addressed by Executive Magistrate/Tehsildar (Kapashera), conveying the approval of District Magistrate (South-West) to ASI Gajraj Singh, P.S. Kapasehra. This letter dated 10.09.2020 reads as under:

*“Sub: Regarding complaint
u/s 195 of Cr. P.C.*

With reference to your letter dated 20/07/2020, it is stated that a complaint has been filed at Police Station Kapashera by this office regarding illegal construction activity during lock down period at Fun & Food Village Kapashera, New Delhi. On this complaint, a case vide FIR No. 113/2020 dated 24/03/2020.

Therefore, the undersigned has been directed to convey the approval of the DM/DC (South-West) to file this complaint u/s 195 of Cr. P.C. to prosecute in the aforesaid case. The undersigned is unable to attend the Hon'ble Court on each and every date of hearing, thus the undersigned may kindly be exempted from personal appearance. The Ld. APP attached to the Hon'ble Court may kindly be permitted to plead the case on behalf of the undersigned...”

19. As far as the aforesaid communication dated 10.07.2020 from the office of Executive Magistrate is concerned, the same cannot be termed as a complaint under Section 195 Cr. P.C. for the reasons that firstly, the same is not addressed to the learned Magistrate or the Court, rather it has been addressed to ASI posted at P.S. Kapashera, and secondly, it merely says that a complaint had already been lodged by them with the police and thus, the same be filed under Section 195 Cr. P.C.



20. In these circumstances, this Court deems it apt to take note of the decision of this Court in case of Gurucharan Singh Arora v. The State, (2002) 96 DLT 181, relevant observations of which read as under:

“5. ...In order to appreciate the rival contentions, it would be appropriate to quote relevant portion of complaint. It reads:—

“I Sh. G.L. Mehta, Inspector, SHO, P.S. Patel Nagar, Delhi in pursuance of Section 195 Cr. P.C. hereby give consent to prosecution (1) Gurcharan Singh Arora S/o Jagaj Nath Arora R/o G-29, Bali Nagar, Delhi, FIR No. 557/93, under Section 186/332/353/506/34 IPC and 185 & 39/192 M.V. Act, P.S. Patel Nagar, Delhi & (2) Gaurav Arora S/o Gurcharan Singh Arora r/o G-29, Gali Nagar, Delhi under Section 186/332/353/506/34 IPC vide case FIR No. 557/93, P.S. Patel Nagar, Delhi.”

6. Section 2(d) of Cr. P.C. defines the complaint to mean 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. It is true that no particular form is prescribed in which the complaint should be made and the substance of the complaint that is to be read. It is not necessary that it should categorise elements of the offence to be charged. It is enough that the facts alleged should constitute an offence for which the accused is charged. It does not matter even if the complainant quotes wrong Sections. The complaint is meant to put the machinery of law in motion. Whether allegations were made with a view to take



action against the accused would depend upon the facts and circumstances of each case.

7. In this case, there was nothing in the complaint quoted above to indicate that the complaint was made to the Magistrate for taking action under Section 186 IPC. Mere consent of the SHO for prosecution of the accused cannot be construed as the complaint. Further, there is nothing on record to indicate that the cognizance was taken by the Magistrate on the basis of the complaint under Section 195 Cr. P.C.. Therefore, the charge under Section 186 IPC against the petitioner is not sustainable. It is needless to observe that in all such cases, the complaint should be filed by the concerned public servant with a prayer to take action against the accused and whenever such complaint under Section 195 Cr. P.C. is filed along with charge-sheet under Section 173 Cr. P.C., the Courts while taking cognizance, should also take note of such complaint, to avoid any technical objection at a later stage...”

(Emphasis supplied)

21. Similarly, this Co-ordinate Bench of this Court in case of Mohan Kukreja v. State (Govt. of NCT of Delhi), 2019 SCC OnLine Del 6398, while setting aside the order of cognizance taken on chargesheet and in absence of a complaint under Section 195 Cr. P.C. filed by the concerned public servant before the Magistrate, had observed as under:

“12. The complaint made by the respondent No. 2 on 19.02.2016 was a complaint made to the SHO and is not a complaint to the Magistrate so as to satisfy the requirements of Section 195(1)(a)(i) Cr. P.C. The final



report filed by the SHO is not a report of a Police Officer of commission of a noncognizable offence so as to satisfy the requirements of Section 2(d) of Cr. P.C.

13. The alleged complaint does not satisfy the requirements of Section 195 Cr. P.C.

14. Non-compliance of Section 195 Cr. P.C. is a defect which cannot be cured subsequently as is sought to be done by the prosecution by filing a supplementary chargesheet or by way of a complaint given by the public servant after cognizance has been taken.

15. In similar circumstances, this Court in Saloni Arora v. State of NCT of Delhi, 2015 SCC OnLine Del 14460 had attempted to cure the defects of non-compliance of Section 195 Cr. P.C. However, the Supreme Court in Saloni Arora v. State (NCT of Delhi), (2017) 3 SCC 286 set aside the order of this Court and held that non-compliance of Section 195 Cr. P.C. renders the trial itself void ab initio.

16. As noticed above, subject complaint does not satisfy the requirements of Section 195 Cr. P.C. and, accordingly, the Trial Court could not have taken cognizance of the offence under Section 188 IPC either on the final report or on the supplementary chargesheet filed by the prosecution.

17. Since the subject proceedings suffer from infraction of Section 195 Cr. P.C., the impugned orders dated 09.12.2016 and 14.11.2017 cannot be sustained and, accordingly, the action taken by the prosecution against the petitioner for the offence under Section 188 IPC is rendered void ab initio being against the dictum of



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the Supreme Court in Daulat Ram v. State of Punjab, 1962 Supp (2) SCR 812...

(Emphasis supplied)

22. Therefore, the concerned public servant was obliged to file a complaint in writing before the concerned Court as per Section 195 Cr. P.C. but the same was not done in the present case.

23. To the contrary, the public servant in the present case had lodged with the police, an appropriate complaint for registration of present FIR, but after the investigation had been conducted by the police, the concerned public servants had not filed any complaint before the learned Magistrate containing allegations against the petitioner to enable the magistrate to take cognizance under Section 195 Cr. P.C."

15. The judgment in ***Decathlon Sports India Pvt. Ltd.*** (Supra), cannot also come to the aid of the prosecution, as in the said case, while reiterating that Section 195 CrPC bars the Court from taking cognizance of an offence under Section 188 of the IPC and holding that in absence of a complaint, taking of cognizance is bad and such cognizance has to be quashed by the Court, the Court held that the filing of the FIR itself cannot be quashed. I may quote from the judgment as under:-

"15. Section 195 Cr.P.C. bars the court from taking cognizance in some cases i.e., offences punishable under Sections 172 to 188 IPC (both inclusive) or its abetment or attempt, or criminal conspiracy, except on the complaint in writing of the public servant concerned, or his superiors. It is settled law that in the absence of the complaint, taking of cognizance is bad and such taking of cognizance has been quashed by the High Courts and the Apex



Court. The judgments relied upon by the learned counsel for petitioner, namely, Bajranglal Parikh (supra), Gurinder Singh (supra), Apurva Ghiy (supra), Sushil Sharma (supra), Saloni Arora (supra), Daulat Ram (supra) and Mohan Kukreja (supra), are all cases that have set aside orders whereby cognizance was taken by the court in the absence of a complaint of the concerned public servant.

16. But the question is whether on the basis of these judgments, the FIR itself can be quashed. The answer needs to be in the negative. The Cr.P.C. itself requires the reporting of the commission of a cognizable offence at the Police Station. The FIR is only in compliance with prescribed procedure, and so long as it discloses the commission of an offence, and in the absence of any other valid ground, ought not to be quashed. After due investigation, the police will submit a report under Section 173 Cr.P.C. before the learned MM. Whether a complaint by the ACP concerned or only a Report under Section 173 Cr.P.C. will be filed in the present case, cannot be presumed, as filing is yet to take place. If only a Report under Section 173 Cr.P.C. is filed, clearly the Magistrate will not take cognizance. However, if a complaint is also submitted to the court, the existence of an FIR would not constitute a bar to the taking of cognizance. The court is to take cognizance on the complaint of a public servant and not on the report that may forward such a complaint.”

16. In the present case, there is no challenge to the registration of FIR. The challenge is to the order passed by the learned Metropolitan Magistrate taking cognizance of the Final Report, which is not a complaint under Section 195 CrPC. The above-said judgment, therefore, cannot come to the aid of the prosecution.



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17. In view of the above, the order dated 08.10.2021 passed by the learned Metropolitan Magistrate in Criminal Case No. 5612/2021 is quashed, and proceedings emanating therefrom are also quashed. However, it is made clear that the respondent shall be at liberty to file a fresh complaint, if so advised. In case such complaint is filed, the same would be considered in accordance with law.

18. The petition is allowed in the above terms. The pending application also stands disposed of.

19. There shall be no order as to costs.

NAVIN CHAWLA, J

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Click here to check corrigendum, if any