



2024:DHC:6865



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th AUGUST, 2024

IN THE MATTER OF:

+ **CRL.M.C. 2907/2022 & CRL.M.A. 12283/2022**

DR. TARUN KOTHARI

.....Petitioner

Through: Mr. Prasoon Kumar Mishra, Mr. Prabhu Razdan, Mr. Rahat Ali Chaudhary, Ms. Pallavi Nandan Jha and Ms. Arina Bhattacharjee, Advocates.

versus

THE STATE OF NCT OF DELHI, THROUGH CHIEF SECRETARY & ANR.

.....Respondents

Through: Mr. Yudhvir Singh Chauhan, APP for the State.
SI Satwant Singh, PS Crime Branch
Cyber Cell

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court seeking quashing of FIR No. 135/2021, dated 20.07.2021, registered at Police Station Crime Branch for offences under Sections 117/109/269/188 IPC and Section 3 of the Epidemic Diseases Act, 1897.
2. Notice was issued on 04.07.2022. Status Report has been filed.
3. A perusal of the material on record shows that the present FIR was registered on 20.07.2021, i.e. during the peak Covid-19 period, on the statement of Head Constable Naresh Kumar on the basis of a video clip in which the Petitioner herein has been appealing to the general public not to



2024:DHC:6865



wear mask, not to maintain social distancing and not to take Covid-19 vaccine. The Status Report reveals that in the 94 second video clip, the Petitioner is seeing urging the general public not to wear the mask as the mask can reduce the oxygen supply leading to other diseases which can lead to death. The Petitioner is also seeing urging the general public not to maintain social distancing and also not to take any vaccine for Covid-19. The Status Report further reveals that notice under Section 41-A(A) Cr.P.C was served on the Petitioner on 21.07.2021 to join the investigation. It is stated that the Petitioner joined investigation on 21.07.2021 and told the Police that he has done MBBS in 1998 from University of Rajasthan and he also holds a Degree of Doctor of Medicine (MD) in Radiology from Rajasthan Health Science University. It is stated that the Petitioner admitted that he gave the statement not to wear mask, not to maintain social distancing and not to take Covid-19 vaccine as it causes multiple diseases.

4. The present FIR was registered against the Petitioner on the ground that the Petitioner has given such statement in contravention of the notifications released by the Government during the Covid-19 pandemic and, therefore, the Petitioner has committed offences under Sections 117/109/269/188 IPC and Section 3 of the Epidemic Diseases Act, 1897.

5. Learned Counsel for the Petitioner contends that all the statements given by the Petitioner are perfectly correct and there are enough material to back the statements given by the Petitioner. He states that the Petitioner's right to express his opinion cannot be curbed by taking penal action against the Petitioner. Learned Counsel for the Petitioner also states that the Petitioner has not committed any offence and, therefore, the present FIR deserves to be quashed.



6. Heard the Learned Counsel for the Petitioner and perused the material on record.
7. At the outset, this Court does not support any of the statements made by the Petitioner. On the contrary, it is sad and strange that an MBBS Doctor has made such statements, which, according to this Court, is violative of the various directions issued by the Government of India under the Epidemic Diseases Act, 1897.
8. The present FIR has been registered against the Petitioner for offences under Sections 117/109/269/188 IPC and Section 3 of the Epidemic Diseases Act, 1897.
9. Sections 117, 109, 269, 188 IPC and Section 3 of the Epidemic Diseases Act, 1897 read as under:

"Section 117 IPC. Abetting commission of offence by the public or by more than ten persons.

Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 109 IPC. Punishment of abetment if the act abetted is committed in consequence and when no express provision is made for its punishment.

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be



committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Section 269 IPC. 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.

Section 188 IPC. 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 persons 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.

Section 3 of Epidemic Diseases Act, 1897

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."



10. It is the contention of the Petitioner that the FIR could not have been lodged and proceeded against the Petitioner only by filing the complaint in the Court. At this juncture, it is also relevant to reproduce Section 195 Cr.P.C and the same reads as under:

"Section 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.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that--



(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

11. A reading of Section 195 Cr.P.C only postulates that the cognizance for offences punishable under Sections 172 to 188 IPC cannot be taken by a Court except on the complaint in writing of the public servant concerned. However, Section 195 Cr.P.C does not bar registration of the FIR. The Apex Court in M. Narayandas v. State of Karnataka, (2003) 11 SCC 251, has held as under:

"8. We are unable to accept the submissions made on behalf of the respondents. Firstly, it is to be seen that the High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise, there is no substance in the submission. The question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of State of Punjab v. Raj Singh [(1998) 2 SCC 391 : 1998 SCC (Cri) 642] . In this case it has been held as follows: (SCC pp. 391-92, para 2)

"2. We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in



course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) CrPC prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 CrPC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1) CrPC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 CrPC. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 CrPC. The judgment of this Court in Gopalakrishna Menon v. D. Raja Reddy [(1983) 4 SCC 240 : 1983 SCC (Cri) 822 : AIR 1983 SC 1053] on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section 195 CrPC.”

12. A perusal of Section 195 Cr.P.C and the aforementioned Judgement



2024:DHC:6865



shows that for any Court to take cognizance of any offence punishable under Sections 172 to 188 IPC, a complaint has to be made, in writing by the concerned public servant or by some other public servant who is administratively subordinate to the concerned public servant. However, this in no way is a limit on the powers of the Police to investigate an offence under the CrPC. The mandate of the CrPC itself requires the reporting of any cognizable offences to the Police Station, the FIR is simply an implementation of the procedure laid down in the CrPC.

13. Hence, this Court is of the opinion that the FIR under Sections 117/109/188 IPC is not liable to be quashed as the Police has the power to investigate the offence, and only in case of cognizance being taken by a Court must a written complaint be filed before a Magistrate. Accordingly, this Court is of the opinion that the concerned Police Officer, if advised, must file a complaint against the Petitioner for taking cognizance under Sections 269 IPC and Section 3 of Epidemic Diseases Act, 1897 so that the Court can take cognizance of the offence under Section 188 IPC and other offences for abetting Section 188 IPC.

14. With these directions, the Petition is disposed of, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

AUGUST 28, 2024

Rahul