



2024:DHC:8995



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

Date of decision: 12th NOVEMBER, 2024

IN THE MATTER OF:

+ **CRL.M.C. 6820/2022, CRL.M.As. 26442/2022, 6315/2023**

LAKSHAY MEHRA

.....Petitioner

Through: Mr. Amit Singh Chauhan, Mrs.
Shikha Chauhan, Mr. Syed Hamza
Ghayour, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Ms. Richa Dhawan, APP for the State
SI Satyender Gulia, PS Kotla
Mubarakpur.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. This Petition has been filed under Section 482 Cr.P.C. seeking the quashing of FIR No. 187/2019 dated 13.06.2019 registered at PS Kotla Mubarakpur under Sections 186, 353 read with 34 of the Indian Penal Code, 1860 (hereinafter, "IPC") and Section 33 of the Delhi Excise Act, 2009 and setting aside the Impugned Order, dated 12.01.2022 passed by the Saket District Courts, New Delhi.

2. The facts in brief are:

- a. On 13.06.2019 on the direction of the Deputy Commissioner a team of the Delhi Excise Department raided the premises of a restaurant cum bar named "DA Code", which was a unit of Level Entertainment & Hospitality Pvt. Ltd. situated at F-39, 3rd floor, South Extension-1, New Delhi, at around 1:35 AM.



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During the entry of the raiding team the restaurant staff tried to obstruct them in discharge of their official duties and shifted the liquor stock from the bar counters to a room on the terrace of the restaurant. The lock of the terrace room was broken by the Excise Department officials at around 5:05 AM, in the presence of all Excise Inspectors and the local Police. From the said room, 52 bottles of non-duty paid alcohol were recovered and seized. It is pertinent to mention that while the officials were counting the bottles and making inventory, the Petitioner is stated to have created hinderance/obstruction in the work of the officials by persistently asking the officials to be allowed to leave the premises. A case, vide FIR No.187/2019, was registered at the behest of the Excise Inspector against the accused, including the Petitioner, with regard to the sale of non-duty paid alcohol.

- b. A Chargesheet was filed on 11.06.2021 under Section 186, 353, and 34 of the IPC as well as Section 33 of the Delhi Excise Act, wherein, the role of the Petitioner has been highlighted. It is mentioned that the Petitioner created hurdles in the work of the Investigating Officers and was continuously asking the officers to leave the premises, on the grounds that he had just come for dinner and was a working professional. The Chargesheet further indicated that the Petitioner was a silent partner of another accused, Sahil, and used to help him run the establishment “DA Code” as a shadow partner.
- c. On 12.01.2022, vide the Impugned Order, the Trial Court took



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cognizance of the offences, including Section 186 of the IPC, mentioned in the Chargesheet and issued summons to the accused, including the Petitioner. This Order, the FIR No.187/2019, and both the Chargesheet and Supplementary Chargesheet are under challenge in the present Petition.

d. It is pertinent to mention that a Status Report has been filed, on 15.02.2023, wherein the role of the Petitioner has been described as one where he was simply a customer and was obstructing the officials while they were carrying out their work.

3. Notice was issued. Written Submission has been filed by the Petitioner.

4. The Learned Counsel for the Petitioner submits that no offence has been disclosed against the Petitioner, and that the Petitioner has been dragged into this criminal proceeding maliciously. He further adds that the record, as filed by the Prosecution, shows glaring irregularities with regard to the positions taken by the investigative agency apropos the role of the Petitioner and points out that the position is riddled with contradictions.

5. The Learned Counsel for the Petitioner further submits that the Trial Court has erred in taking cognizance of the offence under Section 186 of the IPC. He adds that the Impugned Order passed by the Trial Court lacks application of mind and is a violation of the mandate laid down under Section 195 of the CrPC. He states that cognizance of an offence under Section 186 of the IPC has been taken devoid of a written complaint, that is a mandatory requirement under Section 195 of the CrPC and in compliance of which will render the whole process of taking cognizance as *void ab initio*.



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6. The Learned APP appearing for the State, mentions that the Status Report indicates the role of the Petitioner, as being a regular customer of the establishment. The Status Report further highlights the hindrance that the Petitioner caused when the Excise Officers were trying to carry out their duty. He further clarifies that the role of the Petitioner is limited to being a customer of the premises, "DA Code", as stated in the Status Report.

7. Heard the Learned Counsels appearing for both Parties, and perused the material on record.

8. At this stage it is pertinent to reproduce Section 195 of the CrPC 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."

10. The Apex Court in *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567, has held as under:

"28. Section 195(1)(a)(i) CrPC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill



will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 CrPC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in CrPC like Sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those sections. (Vide Govind Mehta v. State of Bihar [(1971) 3 SCC 329 : 1971 SCC (Cri) 608 : AIR 1971 SC 1708] , Patel Laljibhai Somabhai v. State of Gujarat [(1971) 2 SCC 376 : 1971 SCC (Cri) 548 : AIR 1971 SC 1935] , Surjit Singh v. Balbir Singh [(1996) 3 SCC 533 : 1996 SCC (Cri) 521] , State of Punjab v. Raj Singh [(1998) 2 SCC 391 : 1998 SCC (Cri) 642] , K. Vengadachalam v. K.C. Palanisamy [(2005) 7 SCC 352 : 2005 SCC (Cri) 1673] and Iqbal Singh Marwah v. Meenakshi Marwah [(2005) 4 SCC 370 : 2005 SCC (Cri) 1101] .)

29. The test of whether there is evasion or non-compliance with Section 195 CrPC or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq v. State of W.B. [(1953) 1 SCC 637 : AIR 1953 SC 293 : 1953 Cri LJ 1232] and Durgacharan Naik v. State of Orissa [AIR 1966 SC 1775 : 1966 Cri LJ 1491] , this Court held that the provisions of this section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 CrPC. Thus, cognizance of such an offence cannot be taken by misdescribing it or by putting a



wrong label on it.

30. In *M.S. Ahlawat v. State of Haryana* [(2000) 1 SCC 278 : 2000 SCC (Cri) 193 : AIR 2000 SC 168] this Court considered the matter at length and held as under : (SCC p. 282, para 5)

“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.”(emphasis added)

31. In *Sachida Nand Singh v. State of Bihar* [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] this Court while dealing with this issue observed as under : (SCC pp. 497-98, para 7)

“7. ... Section 190 of the Code empowers ‘any Magistrate of the First Class’ to take cognizance of ‘any offence’ upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the Magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise....”(emphasis supplied)

32. In *Daulat Ram v. State of Punjab* [AIR 1962 SC 1206 : (1962) 2 Cri LJ 286] this Court considered the nature of the provisions of Section 195 CrPC. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the public servant



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concerned, the Tahsildar, had not filed any complaint. This Court held as under : (AIR pp. 1207-08, paras 4-5)

“4. ... The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

5. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside.”

11. It is evident from a bare reading of Section 195 of the CrPC, as well as the aforementioned Judgements, that no court can take cognizance of an offence punishable under the Sections mentioned therein, except on the written complain of the Public Servant whose lawful order has not been complied with, as per the Mandate of Section 195(1)(a)(i) of the CrPC.

12. In the present case, material on record indicates that cognizance of the offence under Section 186 of the IPC has been taken by the Court, vide order dated 12.01.2022. However, material on record indicates that no written complaint has been filed, by the Excise Inspector or aggrieved Public Servant, an action that flouts the established procedure set under Section 195(1)(a)(i) of the CrPC. There is an absolute bar against the Court in taking cognizance of an offence under Section 186 of the IPC except in the manner that is prescribed under Section 195 of the CrPC. Since the Impugned Order, dated 12.01.2022, suffers from a grave infraction of non-compliance Section 195 of the CrPC it cannot be sustained and the



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Impugned Order is rendered *void ab initio*.

13. The question that is now, therefore, left to be answered is whether the FIR can be quashed on mere non-compliance under Section 195 of the CrPC. 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.”

Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the court would not be competent to take cognizance. However, that court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 of the Criminal Procedure



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Code is followed. Thus no right of the respondents, much less the right to file an appeal under Section 341, is affected."

14. In light of the above Judgement, it is clear that Section 195 of the CrPC bars the court from taking cognizance of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except on the complaint in writing of the public servant concerned. However, the question as to whether the FIR, taking cognizance of such an offence, can be quashed must be denied.

15. The parameters of quashing an FIR has been laid down by the Apex Court in several judgments wherein it has been held times without number that the power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The purpose of Section 482 Cr.P.C is to prevent miscarriage of justice and where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged. In the opinion of this Court no case is warranted to quash the FIR. There is no illegality or infirmity in getting the present FIR registered and, as a result, the Police investigating the matter.

16. Considering the gravity of the offences made out against the Petitioner and the process that has been followed by the Prosecution in investigating the case, this court is of the opinion that Impugned Order,



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dated 12.01.2022, must be set aside. However, with regard to the FIR and subsequent Chargesheets, this court is also of the opinion that they suffer from no illegality and should not be quashed.

17. The petition is allowed in part. Pending application(s), if any, stand disposed of.

SUBRAMONIUM PRASAD, J

NOVEMBER 12, 2024

Rahul