



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

290/3

Reserved on: 04.11.2025
Pronounced on: 29.11.2025
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1. CRM-M-24842-2023

BALWINDER SINGH BHUNDER ...Petitioner(s)

Versus

UNION TERRITORY, CHANDIGARH ...Respondent(s)

2. CRM-M-8807-2023

SUKHRAJ SINGH SANDHU ...Petitioner(s)

Versus

STATE OF CHANDIGARH (U.T.) AND OTHERS ...Respondent(s)

3. CRM-M-18286-2023

JAGDEEP SINGH

...Petitioner(s)

Versus

UNION TERRITORY, CHANDIGARH ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. J. S. Brar, Advocate
for the petitioner(s).
(in CRM-M-24842-2023 and CRM-M-18286-2023)

Dr. Khushbir S. Bhullar, Advocate and
Mr. Prabhjot S. Waraich, Advocate
for the petitioner.
(in CRM-M-8807-2023)

Mr. Manish Bansal, Public Prosecutor, U.T., Chandigarh.
Mr.Viren Sibal, Additional Public Prosecutor, U.T., Chandigarh.
Mr.Rajiv Vij, Additional Public Prosecutor, U.T., Chandigarh.

TRIBHUVAN DAHIYA, J.

The aforementioned petitions arise out of one FIR involving
common allegations against the petitioners; accordingly, the same are being
decided together.

2. For brevity, the facts have been noticed from CRM-M-24842-2023, which has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.), seeking quashing of FIR no.0137 dated 07.08.2020, under Section 188 of the Indian Penal Code, 1860, (for short, IPC), registered at Police Station East Sector 26, Chandigarh, along with all consequential proceedings arising therefrom.

3. The FIR in question has been lodged against the petitioners along with co-accused; its translated version, as reproduced in the petition, reads thus:

To, the Station House Officer, Police Station Sector-26, Jai Hind and it is hereby requested before you that I ASI alongwith Senior Constable Arvind 107/CP, C Kavi Pal 2153/CP and LC Rocky 625/CP alongwith SHO Police Station Sector-26 were present near Golf Turn under the supervision of DSP Ram Gopal Sahib with regard to law-and-order duty. SHO Sahib came to know that some workers and leaders of Akali Dal are gathered at Akali Bhawan, Sector-28, and they are marching towards Hon'ble Governor's House, Punjab, Sector-6, Chandigarh to protest. Thereafter, we alongwith SHO Sahib reached Akali Bhawan, Sector-28, and where Sh. Balwinder Singh Bhunder, Member Rajya Sabha (SAD), Punjab was present there, and SHO Sahib told him that in Chandigarh City Section 144 Cr.P.C. is enforced as per the orders passed by D.M./Chandigarh and you are not allowed to gathered 5 or more than 5 persons. If you want to protest then you can do the same at Rally Ground, Sector-25, Chandigarh after taking the permission but as per Sh. Balwinder Singh Bhunder some members have already moved towards the decided place Golf Turn, Chandigarh. At about 12:00 in the noon, Sh. Balwinder Singh Bhunder alongwith 30-35 members of the party reached at Golf Turn, Chandigarh and where Sh. Bikramjit Singh Majithia, MLA Punjab (SAD) also reached. Then 30-35 members were leaded by Sh. Balwinder Singh

Bhunder and Sh. Bikramjit Singh Majithia and they started raising slogans "Punjab Sarkar Murdabad" and "murder cases be registered against Liquor Mafia". SHO Sahib and DSP Sahib tried to make them understand but they all 37 by protesting at Golf Turn, Chandigarh had violated the order No. DM/MA/2020/13923 dated 09.07.2020 of D.M./UT Chandigarh. The same falls within the section 188 of IPC. Hence, all the 37 protestors round up and sent to Police Station Sector-3, Chandigarh. The ruqa for the registration of the case under abovesaid section against Sh. Balwinder Singh Bhunder, Sh. Bikramjit Singh Majithia alongwith 35 other protestors is being sent to Police Station through Constable Arvind Kumar 107/CP. Case Number be informed after the registration of case. By name list of the protestors is being prepared. I ASI alongwith other police officials is busy at the spot.

3.1. After completion of the investigation, challan/chargesheet was presented in the Court against the petitioners under Sections 188 of IPC, and a complaint under Section 195 Cr.P.C. was also filed along with it.

4. In this factual background, learned counsel for the petitioner contended that the protest march had been organised against the Government, and they had the fundamental right to protest under Article 19(1)(a) of the Constitution. To register an FIR for commission of offence under Section 188 IPC, the mandatory procedure under Section 195 Cr.P.C. must be followed, and in the absence of a complaint by the public servant, no action can be taken against the accused. In support of the contention, learned counsel has relied upon the Supreme Court judgments in *Basir-Ul-Huq and others v. State of West Bengal*, AIR 1953 SC 293 and *State of Karnatka v. Hemareddy*, (1981) 2 SCC 185.

5. Learned Public Prosecutors, on the contrary, contended that the petitioners along with other protesters constituted an unlawful assembly and

prevented the police officials from performing their duties. Accordingly, the offence under Section 188 is clearly made out against them. Further, the provisions of Section 195 Cr.P.C. are not attracted at the stage of investigation, and its compliance is required only at the time of taking cognizance by the Court. This has been settled by the Supreme Court in *State of Punjab v. Raj Singh and another*, (1998) 2 SCC 391, *M. Narayandas v. State of Karnataka and others*, (2003) 11 SCC 251, and *Devendra Kumar v. The State (NCT of Delhi) and another*, 2025 1NSC 1009. Accordingly, the grounds of challenge put forth by the petitioners are not sustainable.

6. Submissions made by learned counsel for the parties have been considered.

7. One of the questions raised before the Court relate to compliance of mandatory procedure laid down under Section 195 Cr.P.C., which has given rise to the following issue:

The stage when compliance of the procedure under Section 195 Cr.P.C. is mandated.

7.1. Recently, the Supreme Court in *Devendra Kumar* case, considered entire law on the issues aforementioned, including the cases relied upon by learned counsel for the parties - *Basir-Ul-Huq*, *Hemareddy*, *Raj Singh* and *M. Narayandas*. It laid down that the bar created under Section 195 Cr.P.C. is on taking cognizance of the offences mentioned in Chapter XIV of the Code in the absence of complaint in writing by a public servant, and not on registration or investigation of a case by the police. Therefore, the stage of complying with the procedure mandated in the section is when cognizance of the offence is to be taken by the Court, and not at the time of lodging the FIR.

In this regard the following paragraphs of the judgment are relevant:

48. Thus, in view of the above, the law can be summarized to the effect that there must be a complaint by the public servant who was voluntarily obstructed in the discharge of his public functions. The complaint must be in writing. The provisions of Section 195 Cr.P.C. are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.

49. xxx xxx xxx

50. The heading of Chapter XIV of the Code of Criminal Procedure is "Conditions Requisite for Initiation of Proceedings". The first provision in this Chapter is Section 190 and it deals with the power of the Magistrate to take cognizance of the offences. There are some other provisions in this Chapter which create an embargo on the power of the Court to take cognizance of offences committed by persons enumerated therein except on the complaint in writing of certain specified persons or with the previous sanction of certain specified authorities.

51. A plain reading of Section 195 of the Cr.P.C. would indicate that no Court can take cognizance of an offence punishable under Section 186 of the I.P.C, except upon a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. The opening words of the Section are "No Court shall take cognizance", and consequently, the bar created by the provisions is against taking of cognizance by the Court. There is no bar against the registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of the investigation, as contemplated by Section 173 of the Cr.P.C.

8. In terms of the settled proposition of law, as aforementioned, the procedural compliance is to be seen at the time of taking cognizance of



offences by the Magistrate, and that stage has not reached as yet. Therefore, the perceived non-compliance with the provisions of this section is no ground to seek quashing of the FIR in question at this stage.

9. In view of the discussion, these petitions are disposed of giving liberty to the petitioners to raise the issue regarding bar of Section 195 Cr.P.C. before the trial Court at appropriate stage, if so advised.

10. A photocopy of this order be placed on the connected files.

(TRIBHUVAN DAHIYA)
JUDGE

29.11.2025
Ad

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>