



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

CRM-M-26660-2025
Date of decision: 15.05.2025

Anil Kumar

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sham Lal Saha, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of FIR No.173 dated 15.05.2021 under Section 51(b) of the Disaster Management Act, 2005 and Section 188 of IPC registered at Police Station Ladwa District Kurukshetra.
2. The brief facts of the case are that the FIR (*supra*) was registered after the petitioner, along with his salesman, opened his shop and was found selling shoes by locking the shutter from the outside during the lockdown at a time when Section 144 of Cr.P.C. was in force in the district of Kurukshetra and the operation of shoe shops was expressly prohibited.
3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been falsely implicated in the present case as the information given by the *tehsildar* to the police officials was wrong since the petitioner went to his shop for checking up the locks and he has been wrongly caught with the salesman and two customers. He further submits that the FIR (*supra*) was registered in violation of Section 195(1)(a) of Cr.P.C., as Section 188 IPC



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requires a written complaint from the concerned public servant or superior and, therefore, the mandatory drill of Section 195 of Cr.P.C. has not been followed. In support of his contentions, learned counsel for the petitioners has relied upon the order of this Court in ***Designated Courts for MP's/MLA's vs. State of Punjab and Others*** passed in ***CWP-PIL-29-2021 and other connected cases***, where similar FIRs, registered during the COVID-19 pandemic, were quashed by this Court, due to improper procedure and lack of valid evidence.

4. *Per contra*, learned State counsel opposes the prayer made by the petitioner on the ground that opening of the shop during COVID-19 pandemic was unlawful, which led to registration of the FIR (*supra*).

5. Having heard learned counsel for the parties, this Court finds that the FIR (*supra*) was registered without following the proper legal procedure, and the allegations made in the FIR do not constitute a valid offence under the relevant Sections as the mandatory drill of Section 195 Cr.P.C. has not been followed.

6. The Division Bench of this Court in ***CWP-PIL-29-2021 and other connected cases***, has already dealt the issue involved in the present case in extenso and has quashed all the FIRs, which were registered during the COVID-19 pandemic. The operative part of the said order dated 01.10.2024, reads as follows:-

“5. The Co-ordinate Bench of this Court in its order dated 09.02.2024 took note of the fact that a large number of cases pertaining to the period of Covid-19 Pandemic registered under the afore-noted sections were clogging the judicial system. It was further observed that the Covid-19 Pandemic had posed an enormous challenge to mankind and the public by and large had



followed the orders of the authorities and only in an emergent situation, the people had ventured out for food, medicines and other essential commodities and in such compelling circumstances had violated the orders put in place by the authorities. It was in such circumstances that it was directed that all further proceedings pending before the authorities/Courts in cases registered under Section 188, 269, 270 IPC read with Section 3 of the Epidemic Diseases Act, 1897 and Section 51 of the Disaster Management Act, 2005, would remain stayed.

6. *Therefore, we deem it appropriate at the first instance to deal with the cases which pertain to Section 188 IPC simpliciter.*

7. *The State of Punjab, State of Haryana and U.T., Chandigarh, have furnished the list of the cases registered under Section 188 IPC during the above-said period of Covid-19 Pandemic.*

8. *Section 188 IPC is reproduced hereunder:-*

188. 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 person 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 trends 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.”

9. A reference is required to be made to Section 195(1) (a) Cr.P.C. as it deals with taking cognizance of offence punishable under Section 188 IPC. For ready reference, Section 195(1) (a) Cr.P.C. is reproduced hereunder:-

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 other public servant to whom he is administratively subordinate;

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10. It is manifest from a bare reading of Section 195(1)(a) Cr.P.C. that the Courts shall not take cognizance of a complaint under Section 188 IPC unless it is initiated in writing by the public servant authorized to do so. In the event, the complaint is not made



*by a public servant, who is authorized to do so, it would not be maintainable. Reliance can be placed on the judgment of the Supreme Court in **M.S. Ahlawat vs. State of Haryana, (2000) 1 SCC 278**, wherein it was held that the provision of Section 195 Cr.P.C. is mandatory in nature 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.*

11. Learned counsel for the State of Punjab, the State of Haryana and U.T., Chandigarh, while relying upon the respective affidavits submit that a large number of FIRs, which were registered simpliciter under Section 188 IPC, had been done at the instance of the police and not by a public servant authorized to do so in terms of Section 195 Cr.P.C.

12. It is reiterated that the Covid-19 Pandemic posed an enormous challenge to mankind. It was an extraordinary and unprecedented situation. The law enforcement and other agencies including those maintaining essential services, were overstretched and the general public at large was also facing great hardship as it was a compelling situation. It is apparent that there were instances where people had to venture out of their houses in search of food, medicines or due to other emergent situations and in process, they violated the prohibitory orders issued by the authorities.

13. The High Court being a Constitutional Court is also required to impart complete justice. Section 482 Cr.P.C. empowers the High Court to exercise its jurisdiction to prevent the abuse of the process of law to secure the ends of justice. Similar powers can be exercised under Article 226 of the Constitution of India as well, wherein the jurisdiction of the High Court as a Constitutional Court is wider.

*14. The Supreme Court in the case of **Kapil Agarwal and others vs. Sanjay Sharma and others, (2021) 5 SCC 524** has held as under:-*



“18.1 As observed and held by this Court in catena of decisions, inherent jurisdiction under Section 482 Cr.P.C. and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed. 18.2 As held by this Court in the case of Parbatbhai Aahir v. State of Gujarat (2017) 9 SCC 641, Section 482 Cr.P.C. is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice. Same are the powers with the High Court, when it exercises the powers under Article 226 of the Constitution.”

*15. Further, in the case of **Babita Lila and another vs. Union of India, (2016) 9 SCC 647**, the Supreme Court has laid down as follows:-*

“46. That the provisions of Section 195 of the Code are mandatory so much so that non-compliance thereof would vitiate the prosecution and all consequential orders, has been ruled by this Court, amongst others in C. Muniappan and Others vs. State of Tamil Nadu (2010) 9 SCC 567 wherein the following observations in Sachida Nand Singh and Another vs. State of Bihar and Another (1998) 2 SCC 493 were recorded with approval.

“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 wellrecognised 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).

47. There is thus no escape from the proposition that for a valid complaint under Section 195 of the Code, the mandate thereof has to be essentially abided and as is easily perceivable this is to prevent frivolous, speculative and unscrupulous allegations relating to judicial proceedings in any court, lest the process of law is abused and public time is wasted in avoidable litigation.”

16. This Court in ***Shubham vs. State of Haryana, 2022 SCC OnLine P&H 4072*** has held as under:-

“19. Adverting to the period of Covid-19 pandemic, indubitably the untiring efforts of the administration, its officials, police personnel, medics and paramedics etc. are laudable, to say the least. But for the imposition of restrictions, in larger public interest, the grave situation that was emerging, would have inevitably caused much more havoc in the lives of people, than it actually did, the surge of the cases of infection having been thereby contained, which was the need of the hour. Be that as it may, the proceedings for the alleged violations committed of the administrative orders, are required to be examined in terms of the procedural requirement of the provisions and the law laid down. 20. It is trite law that the non-compliance of the established procedure as envisaged under Section 195 Cr.P.C. is an incurable defect. In the present case the police having registered the FIR for the offence under Section 188



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IPC, being explicitly hit by the aforesaid provision, has rendered the proceedings void-ab-initio.”

17. It is apt to notice that investigations in some of these cases are still underway while other matters have been sent for trial. A large number of these cases are clogging the judicial system, which is already under strain due to huge backlog. It would be expedient and in the interest of justice if the cases, which have been registered under Section 188 IPC, by the police and not by the authorized officer, are quashed by this Court.....”

7. Further a perusal of the record and the allegations contained in the FIR does not indicate that *prima facie* offence under the provisions of Section 188 of IPC and Section 51 of the Disaster Management Act, 2005, are made out against the petitioner.

8. Additionally, upon careful consideration and in light of the order passed by the Division Bench of this Court in ***CWP-PIL-29-2021 and other connected cases***, where similar FIRs registered during the COVID-19 pandemic were quashed, this Court finds that the same reasoning applies to the present case, as well.

9. Accordingly, FIR No.173 dated 15.05.2021 under Section 51(b) of the Disaster Management Act, 2005 and Section 188 of IPC and Section 51 of the Disaster Management Act registered at Police Station Ladwa District Kurukshetra, and all other consequential proceedings arising therefrom are quashed, qua the petitioner.

(HARPREET SINGH BRAR)
JUDGE

15.05.2025

<i>Neha</i>	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No