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

+ CRL.M.C. 8314/2023 & CRL.M.A. 30928/2023

MAYANK RATHAUR

.....Petitioner

Through: Mr. Mridul Jain, Ms. Ruby Sharma,
Mr. Hrshikesh KP and Mr. Sagar
Kumar Pradah, Advs.

versus

THE STATE NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State.
W/SI Sonam PS Connaught Place.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **17.02.2025**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'CrPC') has been filed seeking the following prayers: -

"i. Allow the present Petition and quash of FIR No. 076/2023 dated 28.04.2023 U/s 188 IPC, PS Connaught Place against the Petitioner; and
ii. Quash the charges framed against the Petitioner by the Ld. Metropolitan Magistrate-01, New Delhi, Patiala House Courts vide notice dated 13.09.2023.
iii. Pass any other order/relief/direction(s) which is deemed to be fit and proper in the interest of justice."

3. Brief facts of the case are that, on 27.04.2023 at 20:00 hrs, when ASI Satish Kumar along with HC Jitender/Complainant were patrolling near Regal Building, Connaught Place, Outer Circle, they found an office building by the name of "Innov8" wherein the present petitioner was working as Manager. It



was further stated that the said office has workspace cabins which were being utilised by several companies and also conference rooms which were taken by several persons on hourly basis on fee. The said police personnels asked the petitioner to show the register and identities of the persons who were occupying the said office space and whether they maintain any register regarding the details of the visitors, however, the petitioner could not show them relevant registers and identity documents of the persons concerned and told them that they do not maintain any such register and nor any ID is taken for booking cabin there. Based on these facts, FIR was registered for the alleged violation of Order No. 399-427R-ACP/Con.Place dated 23.03.2023 promulgated under Section 144 of the CrPC, and thereafter, chargesheet was filed for offence punishable under Section 188 of the IPC arraying the present petitioner as accused in the present case.

4. Learned Metropolitan Magistrate *vide* order dated 24.08.2023 took cognizance of the offence punishable under Section 188 of the IPC against the petitioner and framed charges *vide* order dated 13.09.2023. Hence, the present petition has been filed seeking the aforesaid prayers.

5. Learned counsel for the petitioner submits that the order dated 23.03.2023 promulgated under Section 144 of CrPC was in respect of the landlord/owner of the property in question and the present petitioner was, admittedly, manager of the premises in question at the relevant point of time. It is further submitted that chargesheet in the present case has been filed and the learned Trial Court has erroneously taken cognizance of the offence punishable under Section 188 of the IPC *vide* order dated 24.08.2023 against the petitioner in absence of any complaint as required under Section 195(1)(a) of the CrPC. It is further submitted that, in view of the same, notice of



accusation under Section 188 of the IPC *vide* order dated 13.09.2023, whereby charges were framed against the present petitioner is also liable to be set aside.

6. *Per contra*, learned APP for the State submits that the chargesheet in the present case has been filed before the Court of competent jurisdiction and charges have been framed against the present petitioner by the learned Trial Court. On point query from this Court, she on instructions from the Investigating Officer submits, that it has been verified that the present petitioner was manager of the premises in question at the said relevant point in time.

7. Heard learned counsel for the parties and perused the record.

8. Admittedly, the present petitioner, even as per the case of the prosecution, was the manager and not owner/landlord of the subject premises in question. The genesis of the prosecution in the present case is the Order dated 23.03.2023 promulgated by Assistant Commissioner of Police, Sub-Division Connaught Place, New Delhi under Section 144 of the CrPC. The relevant portion of the said Order reads as under: -

“Now, therefore, in exercise of the powers conferred upon Commissioner of Police, Delhi by Section 144 Criminal Procedure Code, 1973 read with Govt. of India, Ministry of Home Affairs, New Delhi's Notification No. U-11036/3/1978(I) — UTL, 1.7.1978 and further delegated to the under signed *vide* Govt. of India, Ministry of Home Affairs, New Delhi's Notification No. F.No. 11036/1/2010-UTL dated 9.9.2010 I, Anil Samota, Assistant Commissioner of Police, Sub Division Connaught Place, New Delhi District, New Delhi do hereby make this written order that **no landlord owner/person of any house /property which falls under the jurisdiction of area of the Police Stations specified in the jurisdiction of Sub Division Connaught Place, shall let/sublet/rent out any accommodation to any persons unless and until he has furnished the particulars of the said tenant's to the Station House**



officer concerned in whose jurisdiction the premises fall. The persons dealing in property business shall also inform in writing to the Station House Office concerned in whose jurisdiction the premises fall about the particulars of said tenants.”

(emphasis supplied)

9. Perusal of the aforesaid order shows that the same applies to the landland/owner of the subject premises, however, in the present case, the petitioner was only the Manager of the subject premises.

10. It is also a matter of record that the cognizance in the present case was taken by the learned Metropolitan Magistrate *vide* order dated 24.08.2023 in absence of any complaint as required under Section 195(1)(a) of the CrPC. The Hon’ble Supreme Court in **C. Muniappan v. State of T.N., (2010) 9 SCC 567: 2010 SCC OnLine SC 946**, has observed and held as under: -

“Charges under Section 188 IPC

27. 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 Penal Code, 1860, or

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”

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 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.”

(emphasis added)

33. Thus, in view of the above, the law can be summarised to the effect



that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance with 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.

34. The learned counsel for the appellants have submitted that as no charge could have been framed under Section 188 IPC in the absence of a written complaint by the officer authorised for that purpose, the conviction under Section 188 IPC is not sustainable. More so, it falsifies the very genesis of the case of the prosecution as the prohibitory orders had not been violated, no subsequent incident could occur. Thus, the entire prosecution case falls.

35. **Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 IPC. However, we do not agree with the further submission that absence of a complaint under Section 195 CrPC falsifies the genesis of the prosecution case and is fatal to the entire prosecution case.”**

(emphasis supplied)

11. A Coordinate Bench of this Court in **Mohan Kukreja v. State Govt. of NCT of Delhi and Another, 2019 SCC OnLine Del 6398**, has observed and held as under: -

“6. By the impugned order dated 14.11.2017, the Trial Court was of the view that a written complaint had been given on 19.02.2016 by Respondent No. 2 - the ADM/CEO, District Disaster Management Authority, which fell within the definition of complaint given by a public servant and as such, was of the view that cognizance had been correctly taken and thereafter framed notice under Section 251 Cr. P.C. against the petitioner for the offence under Section 188 IPC.

7. Section 195 Cr. P.C. 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 an offence punishable under sections 172 to 188 (both inclusive) of the Penal Code, 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) *****”

8. Under Section 195 Cr. P.C., no Court can take cognizance of an offence punishable under the sections enumerated therein (including Section 188 IPC) except on a complaint in writing of the public servant. Section 195 Cr. P.C. has been held to be mandatory and contravention of which vitiates the entire trial being without jurisdiction and void ab initio.¹

9. A complaint has been defined under Section 2(d) of Cr. P.C. as under:—

“2(d) “complaint” means 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.

Explanation - A report made by a police officer in a case which discloses, after investigation, the commission of an non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”

10. Under Section 2(d) of Cr. P.C., a complaint is to be made to a Magistrate. In terms of explanation to Section 2(d) of Cr. P.C., a report by a police officer, which discloses commission of a non-cognizable offence, is also deemed to be a complaint under Section 2(d) of Cr. P.C. However, in the present case, the complaint i.e. the final report on which cognizance has been taken is a final report with regard to an offence under Section 188 IPC, which is a cognizable offence.

11. In the present case, neither does the subject complaint satisfy the requirements of Section 195(1)(a)(i) Cr. P.C. i.e., in writing of



the public servant concerned or of some other public servant to whom he is administratively subordinate or of Section 2(d) of Cr. P.C. i.e., a report of a police officer after investigation of commission of a noncognizable offence.

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 non-cognizable 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 the Supreme Court in *Daulat Ram v. State of Punjab* 1962 Supp (2) SCR 812.”

(emphasis supplied)

12. The aforesaid decision was subsequently relied on by the said Coordinate Bench Court in **Sachin & Ors. v. State of NCT of Delhi**, **2019:DHC:3086**, has observed and held as under: -



“23. With regard to the charges framed under Sections 186/353 IPC is concerned, said charges could not have been framed in the absence of compliance with Section 195 Cr.P.C. No court can take cognizance of an offence under Section 186 IPC unless a complaint is made by the proper officer in the proper format as prescribed under Section 195 Cr.P.C. Breach of Section 195 Cr.P.C. renders the action void ab initio².

24. Non-compliance of Section 195 Cr.P.C. is a non-curable defect and renders the proceeding void ab initio³.

25. Further, it may be seen that Section 353 IPC has also been invoked in the subject case which is, in fact, an extension of Section 186 IPC. The allegations with regard to Section 353 IPC, as contained in the subject FIR, really fall in the nature of an offence under Section 186 IPC.

26. As noticed above, no Court could have taken cognizance of the offence under Section 186 IPC except on a complaint of a proper officer made under Section 195 Cr.P.C.

29. Further, the impugned order dated 11.07.2017 cannot be sustained and is rendered void ab initio as subject proceedings suffer from infraction of Section 195 Cr.P.C., being against the dicta of the Supreme Court in Daulat Ram vs. State of Punjab: 1962 Supplementary 2 SCR 812.”

(emphasis supplied)

13. In view of the aforesaid observations made by the Hon’ble Supreme Court as well as Coordinate Bench of this Court, the cognizance of offence punishable under Section 188 of the IPC cannot be taken in absence of a complaint in writing by the public servant concerned as provided under Section 195(1)(a) of the CrPC and such proceedings if initiated are *void ab initio* as the non-compliance of Section 195 of the CrPC is a non-curable defect. In the present case, as already noted hereinabove, the learned Metropolitan Magistrate had taken cognizance of the offence punishable under Section 188 of the IPC against the present petitioner in absence of complaint as required under Section 195(1)(a) of the CrPC.



14. Thus, in view of these circumstances, the order dated 13.09.2023, whereby, charges were framed against the petitioner for the offence punishable under Section 188 of the IPC is liable to be set aside and the petitioner stands discharged.

15. The petition is disposed of accordingly.

16. Pending applications, if any, also stand disposed of accordingly.

17. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

FEBRUARY 17, 2025/kr/ns

[Click here to check corrigendum, if any](#)