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

+ CRL.M.C. 8351/2023, CRL.M.A. 31098/2023 & CRL.M.A. 31099/2023

GURPREET SINGH BHANDARI

.....Petitioner

Through: Mr. Jaspreet Singh Rai, Mr. Rohit Nagpal, Mr. Ankur Singh, Mr. Swetabh Kumar, Mr. Ravi Kumar, Mr. Devinder Singh, Ms. Sukhdeep Kaur Rai and Mr. Krish Mahajan, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Hemant Mehla, APP for the State.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

03.03.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Cr.P.C. has been filed seeking the following prayers: -

“(a) Quash the order dated 13.09.2022 whereby Ld. MM, Saket Courts, New Delhi had taken cognizance against the petitioner herein in relation to charge-sheet filed in FIR No. 01 of 2022 registered at P.S Neb Sarai;

b) Pass any other or further order(s) or direction(s) as this Hon'ble Court deem fit and proper under the facts and circumstances of the present Petition in the interest of justice.”

3. *Vide* the impugned order, the learned Metropolitan Magistrate had taken cognizance against the present petitioner with regard to the chargesheet dated 20.01.2022 filed in FIR No. 01/2022 registered at P.S.



Neb Sarai for the offence punishable under Section 188 of the IPC and, thereafter, summons were issued against the present petitioner.

4. Brief facts of the case as per the status report dated 05.09.2024 authored by Inspector Rakesh Kumar, SHO, P.S. Neb Sarai is that on 01.01.2022 at around 11:50 P.M., while performing patrolling duty, Head Constable Aditya with Constable Dharmendra had reached near Chicken Salsa R/o Shop No. 13, DDA Market, Said-Ul-Ajaib, New Delhi and found that the said shop was open till late night and was very crowded. Upon inquiring the shop owner's name and address, it was found to be that of the present petitioner and one Anand Rao. Thereafter, the case FIR bearing No. 01/2022 was registered for the offence punishable under Section 188 IPC against the petitioner for violation of Order No.- 7284-7294/SO/ACP/Sangam Vihar, New Delhi dated 27.12.2021. It is further stated in the said status report that during the investigation, Head Constable Aditya inspected the area and prepared the site map and issued notice to the present petitioner and co-accused Anand Rao under Section 41A of the Cr.P.C. A complaint under Section 195 Cr.P.C. was submitted before the ACP, Sangam Vihar for prosecuting the accused persons under Section 188 Cr.P.C. and thereafter, the petitioner and co-accused person were chargesheeted for disobedience of the order promulgated under Section 144 Cr.P.C. during the said period.

5. Learned counsel for the petitioner submits that after the chargesheet was filed, the learned Metropolitan Magistrate-03, South District, Saket Courts had issued summons against the present petitioner on 13.09.2022, pursuant to which the petitioner had appeared before the



learned Metropolitan Magistrate and the case was put up for consideration on 23.01.2023, wherein the learned Metropolitan Magistrate had found that *prima facie*, sufficient material was available on record to serve the notice under Section 251 of the Cr.P.C. against the petitioner for the offence under Section 188 of the IPC.

6. It is submitted by the learned counsel that in terms of Section 195 of the CrPC, no Court can take cognizance of an offence under Section 188 of the IPC except on a complaint made by the public servant concerned. It is further pointed out by the learned counsel that under section 2(d) of Cr.P.C., a complaint is to be made to a Magistrate and in terms of explanation to Section 2(d) of the 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 the 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 of the 188 IPC, which is a cognizable offence and, therefore, the alleged complaint does not satisfy the mandate of Section 195 of the Cr.P.C. Since the complaint in the present case was made to the SHO, P.S. Neb Sarai and not to the concerned Magistrate, the same does not satisfy the requirements under Section 195(1)(a)(i) Cr.P.C. Thus, the subject proceedings in the present case suffer an infraction of the provisions under Section 195 of the Cr.P.C.

7. *Per contra*, learned APP for the State submits that the chargesheet in the present case had been filed before the Court of competent jurisdiction and notice of accusation under Section 251 of the CrPC was framed against the present petitioner by the learned Trial Court *vide*



order dated 23.01.2023 and the case is at the stage prosecution evidence before the learned Trial Court.

8. Heard learned counsels for the parties and perused the records.

9. The FIR in the present case had been registered on the complaint of a police officer, namely, Head Constable Aditya, and after investigation the chargesheet was filed before the learned Metropolitan Magistrate, Saket Courts. It is a matter of record that cognizance against the petitioner for the offence under Section 188 of the IPC had been taken on the basis of the said chargesheet and summons were issued thereafter *vide* the impugned order dated 13.09.2022. It is the case of the petitioner that the mandate under section 195(1)(a)(i) of the Cr.P.C. has not been complied with in the present case.

10. The Hon'ble Supreme Court in **C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 567**, after considering several judicial precedents, had explained the law of Section 195 of Cr.P.C. with respect to the charge under Section 188 of IPC in the following manner:

“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(a)(i) Cr. P.C. 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 Cr. P.C. 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 the Cr. P.C. 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. The State of Bihar*, (1971) 3 SCC 329 : AIR 1971 SC 1708; *Patel Laljibhai Somabhai v. The State of Gujarat*, (1971) 2 SCC 376 : AIR 1971 SC 1935; *Surjit Singh v. Balbir Singh*, (1996) 3 SCC 533; *State of Punjab v. Raj Singh*, (1998) 2 SCC 391; *K. Vengadachalam v. K.C. Palanisamy*, (2005) 7 SCC 352; and *Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370 : AIR 2005 SC 2119).

29. The test of whether there is evasion or non-compliance of Section 195 Cr. P.C. 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. The State of West Bengal*, (1953) 1 SCC 637 : AIR 1953 SC 293; and *Durgacharan Naik v. State of Orissa*, AIR 1966 SC 1775, 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 Cr. P.C. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

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

“....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, this Court while dealing with this issue observed as under:

“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 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, this Court considered the nature of the provisions of Section 195 Cr. P.C. 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 concerned public servant, the Tahsildar had not filed any complaint. This Court held as under:

“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. 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 summarized



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 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.

34. Learned counsel for the appellants have submitted that 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, 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...”

(Emphasis supplied)

11. Coordinate Bench of this Court in **Mohan Kukreja v. State (NCT of Delhi)** (*supra*), 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 Coordinate Bench of this Court in the judgement of **Santokh Singh Chawla v. State (NCT of Delhi), 2023 SCC OnLine Del 4773**, wherein it has been observed and held as under:

“22. Therefore, the concerned public servant was obliged to file a complaint in writing before the concerned Court as per Section 195 Cr. P.C. but the same was not done in the present case.

23. To the contrary, the public servant in the present case had lodged with the police, an appropriate complaint for registration of present FIR, but after the investigation had been conducted by the police, the concerned public servants had not filed any complaint before the learned Magistrate containing allegations against the petitioner to enable the magistrate to take cognizance under Section 195 Cr. P.C.

24. As observed in preceding discussion, there was no illegality or infirmity in getting the present FIR registered and the subsequent investigation by the police. However the concerned public servant in the present case should have prepared a complaint as envisaged under Section 195 Cr. P.C. containing the allegations against the petitioner and the material that was brought on record during the course of investigation by the police, and the same should have been filed before the learned Magistrate or the same could have forwarded along with the chargesheet to the Court concerned.

25. In the present case, the aforesaid course was not followed by the concerned public servants. Thus, the cognizance as taken by the learned Magistrate on the basis of chargesheet was bad in law.

26. Accordingly, the order dated 08.02.2021 passed by 2021 passed by learned Metropolitan Magistrate-10, Dwarka Courts, New Delhi in Cr. Case 7950/2020 taking cognizance of chargesheet is set aside.”

13. In view of the observations made by the Hon’ble Supreme Court



as well as Coordinate Benches 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 Cr.P.C. and such proceedings if initiated are *void ab initio* as the non-compliance of Section 195 of the Cr.P.C. 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. Thus, in view of these circumstances, the impugned summoning order dated 13.09.2022 passed by the learned Metropolitan Magistrate-03, South District, Saket Courts, whereby summons were issued against the present petitioner for the offence punishable under Section 188 of the IPC in FIR No. 01/2022, registered at PS Neb Sarai, including all other proceedings emanating therefrom are hereby quashed and set aside.

14. The petition is allowed and disposed of accordingly.
15. Petitioner stands discharged.
16. Pending application(s), if any, are also disposed of.
17. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

MARCH 3, 2025/bsr/sc

Click here to check corrigendum, if any