
(2014) 02 MP CK 0107
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 888 of 2013

State of Madhya Pradesh and Another	APPELLANT
Vs	
Jyotiraditya Scindia	RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173 190 195 195(1) 195(1)(a)
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)
Penal Code, 1860 (IPC) — Section 172 173 174 175 176

Citation : (2014) 1 JLJ 326

Hon'ble Judges : Shantanu Kemkar, J; M.C. Garg, J

Bench : Division Bench

Advocate : C.R. Karnik, Dy. Govt.s, for the Appellant;

Final Decision : Dismissed

Judgement

1. This writ appeal has been filed u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 aggrieved of the order dated 19.11.2012 passed by the learned Single Judge in W.P. No. 7984/2011 allowing the petition filed by the respondent/petitioner. According to the learned counsel for the appellants, the judgment is not sustainable. It has been submitted that the writ Court has misconstrued the provisions of Section 195(1) of Cr.P.C. as bar to take cognizance of offence u/s 188 of IPC while registering the FIR.

2. We have gone through the order passed by the learned Single Judge, wherein it has been held as under:-

9. In the present case, it is an undisputed fact that permission was granted by the Sub-Divisional Officer, Sonkatch, District Dewas to hold a public meeting in respect of Bye-election of Vidhan Sabha, 2001, Sonkatch. Permission was granted on 11-02-2011. Clause-2 of the terms and conditions of the permission reveals that the permission was valid up to 05:00 PM. As stated in the return,

the meeting which was supposed to conclude at 05:00 PM continued till 05:05 PM with the aid and assistance of Public Addressing System (mike and speaker) and the meeting without mike and speaker continued till 05:15 PM. In the present case, the petitioner has raised various grounds and his contention is that the ingredients of Section 188 are not spelt out from the bare perusal of the FIR lodged in the matter. Section 188 of I.P.C. Reads as under :-

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.

10. The Code of Criminal Procedure, 1973 provides for a procedure in respect of prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. Section 195 of the Code of Criminal Procedure, 1973 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 Indian Penal Code (45 of 1860), or

(ii) of any abetment of, 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 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 u/s 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 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 authorize 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 sent 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 appeal 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.

3. Before the writ Court it was argued on behalf of the respondent/petitioner that for taking cognizance u/s 188 of IPC a compliant has be made to the Court directly having jurisdiction in the matter in respect of offence committed u/s 188 of IPC and it was not for the police to register a case against the offenders for an offence u/s 188 of IPC and then to submit a report u/s 173 of the Cr.P.C., which is precisely the submission made by the learned counsel for the appellants before us also. Reliance has been placed on a judgment delivered by a Division Bench of

the High Court of Punjab and Haryana in the case of Jiwan Kumar Vs. State of Punjab and Others, are reproduced as under :-

10. It is admitted case of respondent No. 3 that FIR No. 128 (P3) was registered against the petitioner on 16.6.2005 u/s 188 IPC. The petitioner was thereafter arrested and interrogated. After the completion of the investigation, the challan (final report u/s 173 of the Code) was presented against the petitioner before learned Chief Judicial Magistrate, Mansa on 20.12.2005 and the charge was framed on 20.1.2006. Further that the case is now fixed for recording of prosecution evidence.

11. It is, thus, clear that the proceedings against the petitioner u/s 188 IPC have been initiated on the basis of the FIR and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1)(a) of the Code. The registration of FIR and the launching of proceedings thereafter against the petitioner is not permitted by the Code and thus, cannot be allowed to be sustained. Resultantly, the petition is allowed. Promulgation order dated 27.5.2005 (P-2) issued by the District Magistrate, Mansa is quashed. Similarly, FIR No. 128, dated 16.6.2005 registered at Police Station City Mansa u/s 188 IPC (P-3) and all the proceedings taken thereunder against the petitioner are also quashed and set aside.

4. In view of the aforesaid, the learned Single Judge has further observed as under :-

12. The Division Bench of Punjab and Haryana High Court has held that in respect of Section 188 of I.P.C., taking into account the statutory provisions as contained u/s. 195 of Code of Criminal Procedure a complaint has to be made in writing to the court by the Public Servant. The Division Bench has further held that it is not open for the Police to register a case against the offender u/s. 188 of I.P.C. and then to submit a report u/s. 173 of the Code of Criminal Procedure Code, 1973. Thus, keeping in view the judgment delivered by the Division Bench, this court is of the considered opinion that action of the respondents in registering the FIR is certainly contrary to the statutory provisions as contained u/s. 195 of the Code of Criminal Procedure, 1973 and the FIR has to pave the path of extinction.

15. The Apex court in the case of C. Muniappan and Others Vs. State of Tamil Nadu, held as under :-

28. Section 195(a)(i) Cr. P.C. bars the court from taking cognizance of any offence punishable u/s 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 u/s 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 Vs. State of Bihar*, ; *Patel Laljibhai Somabhai Vs. The State of Gujarat*, ; *Surjit Singh and others Vs. Balbir Singh*, ; *State of Punjab Vs. Raj Singh and Another*, ; *K. Vengadachalam v. K.C. Palanisamy and Ors.*, (2005) 7 SCC 352; and *Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another*,

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-huq and Others Vs. The State of West Bengal*, ; and *Durgacharan Naik and Others Vs. State of Orissa*, , 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.

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.

35. Undoubtedly, the law does not permit taking cognizance of any offence u/s 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 u/s 188 IPC. However, we do not agree with the further submission that absence of a complaint u/s 195 Cr. P.C. falsifies the genesis of the prosecution's case and is fatal to the entire prosecution case.

36. There is ample evidence on record to show that there was a prohibitory order; which had been issued by the competent officer one day before; it had been given due publicity and had been brought to the notice of the public at large; it has been violated as there is no denial even by the accused persons that there was no "Rasta Roko Andolan". Unfortunately, the agitation which initially

started peacefully turned ugly and violent when the public transport vehicles were subjected to attack and damage. In such an eventuality, we hold that in case the charges u/s 188 IPC are quashed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned.

16. The Apex court in the aforesaid case was dealing with an issue wherein two FIRs are clubbed together, one was in respect of a murder for which an offence u/s. 302 of the Indian Penal Code was registered against the accused person and one was in respect of an offence u/s. 188 of the Indian Penal Code. The common charge sheet was issued clubbing both the FIRs and the Apex court on the ground that there was evasion or non-compliance on the part of the state in respect of section 195 has held the entire trial in respect of offence falling u/s. 188 of the Indian Penal Code to be void ab-initio, meaning thereby without jurisdiction.

17. Resultantly, in the present case as there is no compliant as required u/s. 195 of the Code of Criminal Procedure, keeping in view the judgment delivered by the apex court and also keeping in view the judgment delivered by the division Bench of Punjab and Haryana High Court in the case of Jiwan Kumar Vs. State of Punjab and others (supra), this court is of the considered opinion that the statutory provisions as contained u/s. 195 of the Code of Criminal Procedure, 1973 have not been followed and, therefore, the FIR registered by the Police at Crime No. 60/2011 for an offence u/s 188 of the Indian Penal Code dated 13-02-2011, is accordingly quashed.

No order as to costs.

5. Applying the principles laid down by the Hon''ble Supreme Court and the provisions contained u/s 188 of IPC and Section 195 of Cr.P.C. as well as the judgment delivered by the Punjab and Haryana High Court in Jiwan Kumar's case (Supra) which has also been quoted in the impugned order, the learned Single Judge held that in this case there was a violation of the statutory provisions contained u/s 195 Cr.P.C. in registering the FIR as Crime No. 60/2011 for an offence u/s 188 of IPC dated 13.02.2011, the same was accordingly quashed. Having gone through the provisions of the law quoted and the judgment of the Apex Court as also the judgment of Punjab and Haryana High Court and in the absence of any written submissions despite opportunity granted, we dismiss the appeal.

C.C. as per rules.