

**Court No. - 11**

**Case :-** APPLICATION U/S 482 No. - 12525 of 2023

**Applicant :-** Israr Ahmad

**Opposite Party :-** State Of U.P. Thru. Addl. Prin. Secy. Home Deptt. Civil Sectt. Lko And Another

**Counsel for Applicant :-** Ajmal Khan, Javed Khan

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajesh Singh Chauhan, J.**

1. Heard Sri Ajmal Khan, learned counsel for the petitioner and Sri Aniruddha Kumar Singh, learned Additional Government Advocate-I for the State.

2. By means of this petition filed under Section 482 Cr.P.C., the petitioner has prayed to quash the proceeding of Criminal Case No. 2355 of 2020, State Vs. Israr Ahmad and Others, arising out of Case Crime No. 839 of 2019, under Sections 143, 188, 342 IPC, Police Station Kotwali Nagar, District Pratapgarh, pending in the court of learned Chief Judicial Magistrate, Pratapgarh as well as chargesheet dated 24.11.2019 and summoning order dated 12.02.2020.

3. The contention of learned counsel for the petitioner is that the Investigating Officer has conducted the investigation in sheer casual and cursory manner and filed the chargesheet against the petitioner under Sections 143, 188, 342 IPC. The court concerned took cognizance in a mechanical manner and has issued the summoning order without applying its judicial mind against the petitioner on 12.02.2020.

4. Learned counsel for the petitioner has stated that the cognizance of the chargesheet by the learned Chief Judicial Magistrate, Pratapgarh in the present case is violation of Section 195(1)(a)(i) of Cr.P.C. He has further submitted that Section 195(1)(a)(i) provides that no court shall take cognizance of an offence under Section 188 IPC except on the complaint in writing of the public servant concerned or of some other public servant, to whom he is administratively subordinate.

5. Attention has been drawn towards the judgment and order dated 18.06.2021 passed by Karnataka High Court in **Writ Petition No. 13328 of 2018(GM-RES), Sri Rajashekharananda Swamiji and Another Vs. The State of**

**Karnataka**, referring para nos. 7, 8, 9,10 and 11 which read as under:

"7. As rightly pointed out, Section 188 of IPC is the main offence. The other offences flow from that. Section 195(1)(a) of Cr.P.C. bars the Court to take cognizance of such offence unless in accordance with the procedure laid down therein. Section 195(1)(a) reads as follows:

**"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, 1860 (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 of some other public servant to whom he is administratively subordinate;"**

8. Reading of the above provision makes it clear that to take cognizance there should be a written complaint and such complaint should be filed either by the officer issuing such promulgation order or the officer above his rank. In the case on hand, as per the complaint itself, prohibitory order under Section 144 of IPC was promulgated by the Commissioner of Police and not the complainant.

9. Further Section 2(d) of Cr.P.C. defines complaint as **allegations made orally or in writing to the Magistrate** with a view to the Magistrate taking action on such complaint under the Code. Only on such complaint, the Magistrate can take cognizance under Section 190(1)(a) of Cr.P.C. Thereafter the procedure prescribed under Section 200 of Cr.P.C. has to be followed. Therefore the first information report, charge sheet and the order taking cognizance on such charge sheet are without jurisdiction.

10. Then the question is Annexures-A to D get vitiated only so far as the offence under Section 188 of IPC. In para 8 of the judgment in *State of Karnataka v. Hemareddy* [(1981) 2 SCC 185], the Hon'ble Supreme Court held as follows:

"8. We agree with the view expressed by the learned Judge and hold that in cases **where in the course of the same transaction an offence** for which no complaint by a Court is necessary under Section 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a Court is necessary under that sub-section, are committed, **it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld.**"

(Emphasis supplied)

11. Reading of the above judgment makes it clear that if the offences form

part of same transaction of the offences contemplated under Section 195(1) of Cr.P.C, then it is not possible to split up and hold that prosecution of the accused for the other offences should be upheld. Therefore the entire complaint, first information report, charge sheet and the order taking cognizance are liable to be quashed. The petition is allowed.

*The impugned first information report, complaint, the charge sheet and the proceedings in C.C.No. 3660/2016 are hereby quashed."*

(Emphasis supplied)

6. Learned counsel for the petitioner has stated that the facts and circumstances of the present case are similar to the case dealt by the Karnataka High Court, inasmuch as in the present case, the complaint has not been lodged by the authority who has issued the promulgation order under Section 144 Cr.P.C. but by one Sub Inspector. Further, in the case decided by the Karnataka High Court **Re: Sri Rajashekharananda Swamiji (supra)**, the FIR was lodged under Sections 143, 144, 145, 147, 148, 153, 188, 332, 353 of IPC and Sections 2(a) and 2(b) of the Karnataka Prevention of Destruction and Loss of Property Act, 1981 and in the present case the FIR was lodged against the petitioner under Sections 143, 188 and 342 of IPC.

7. Further attention has been drawn by learned counsel for the petitioner towards the judgment and order dated 10.11.2017 passed by Gujarat High Court rendered in **Criminal Misc. Application (For Quashing & Set Aside Fir/order) No. 17286 of 2017, Merubhai Mandanbhai Chandra and 1 others Vs. State of Gujarat and 1 others**, referring Para nos. 45 and 46 which read as under:

*"45. In **State v. Kathi Unad**, AIR 1955 Saurashtra 10: (1955 Cri LJ 52), the learned Judge relying on the Supreme Court case of **Bashirul Haq AIR 1953 Supreme Court 293:(1953 Cri LJ 1232)** said that the very act of obstruction lay in the assault and the hurt to complainant and that the offence primarily committed was under Section 186, I.P.C. and to convict the accused for the offence under Section 332, I.P.C. would be tantamount to holding them guilty under Section 186, I.P.C. and then convicting them for the offence under Section 332, I.P.C. They came to the conclusion that the prosecution could not circumvent the provisions of Section 195 by a dubious method. (See also **Makaradhwaj Sahu vs. State AIR 1954 Orissa 175: (1954 Cri LJ 950)**). The decision in AIR 1953 Nag 290 : (1953 Cri LJ 1573) is also pertinent.*

*46. In some of the applications before me, the only offence is either section 186 or 188 of the IPC. In such type of cases, there should not be any difficulty in quashing the prosecution in view of the bar of Section 195 of the Cr.P.C., 1973 However, there are few cases on hand, in which, over and above sections 186 or 188 of the I.P.C., the other offences are also there which are not covered under section 195 of the Cr.P.C., 1973. It is only in such cases, the court has to be careful. I have noticed that in some*

*of the cases, there is a charge of section 353 of the IPC along with section 186 of the IPC. I am of the view that the very act of obstruction lies in the alleged assault and use of criminal force. In truth and substance, such an offence would fall in the category of sections mentioned in section 195 of the Code and it is not open to by pass its provisions even by choosing to prosecute under section 353 of the IPC only. There is no scope, in any of the matters on hand, having regard to the materials on record, to split up the offences so as to avoid the bar of section 195 of the Cr.P.C. 1973 as all the offences can be said to have been committed in the course of one transaction. All the offences can be said to have been an integral part of one transaction."*

(Emphasis supplied)

8. Learned counsel for the petitioner has also drawn attention of this Court towards judgment of Apex Court rendered in the case of **D.K. Rajendran and Ors. etc. etc. Vs. State of T.N.**, reported in **AIR 2010 SC 3718**, referring Para 25 which reads as under:

*"25. 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."*

(Emphasis supplied)

9. Learned counsel for the petitioner has stated that the Karnataka High Court as well as Gujarat High Court, in the aforesaid judgments, have held that if the offences form part of same transaction of the offences contemplated under Section 195(1) of Cr.P.C., then it is not possible to split up and hold that prosecution of the accused for the other offences should be upheld, therefore, learned counsel has stated that in view of the bar under Section 195 of Cr.P.C., the prosecution under Section 188 IPC may fall against the petitioner and since the offences form part of same transaction, therefore, the chargesheet consisting Section 188 IPC and other Sections and further proceedings are liable to be quashed.

10. Per contra, Sri Aniruddha Kumar Singh, learned AGA-I has submitted that so far as the chargesheet under Section 188 IPC is concerned, he has nothing to say against the contention of learned counsel for the petitioner in view of the specific bar to that effect under Section 195 of Cr.P.C. He has also stated that the complainant of the said FIR is not the authority who has issued the proclamation but the same has been lodged by one police officer. However, so far as the applicability of Sections

143 and 342 IPC is concerned, the chargesheet has been filed against the petitioner and knowing fully well about the proclamation, so issued by the Administrative Authority, under Section 144 of Cr.P.C., the petitioner and others have breached such proclamation, therefore, he may be prosecuted under Sections 143 and 342 IPC. In support of his argument, Sri Aniruddha Kumar Singh has placed reliance of the decision of Jharkhand High Court dated 25.03.2022 rendered in the case of **Amitabh Choudhary Vs. The State of Jharkhand and Ors, reported in MANU/JH/0171/2022**, referring Para nos. 43, 44 and 45 which read as under:

*"43. Accordingly, the impugned order taking cognizance dated 03.09.2014/09.05.2014 passed by the learned Judicial Magistrate, Ranchi arising out of Angara P.S. Case No. 23 of 2014 dated 11.03.2014 corresponding to G.R. Case No. 1449 of 2014 is set aside to the extent it relates to offence under Section 126 of the Representation of People Act, 1951 and offence under Section 188 IPC. Since cognizance under section 188 IPC has been set-aside on technical grounds, the concerned authorities may proceed in accordance with law as already indicated above. As a result, the present criminal miscellaneous petition is partly allowed.*

*44. So far as the offence under section 143 of IPC is concerned, the impugned order taking cognizance does not call for any interference and accordingly, the learned court below is directed to proceed with the matter expeditiously.*

*45. It is made clear that dismissal of this petition with regards to offence under Section 143 IPC and any observation made in this order will not prejudice the case of the respective parties before the learned court below in any manner."*

(Emphasis supplied)

11. Having heard learned counsel for the parties, having perused the material available on record and having regard the decisions of Apex Court and various High Courts, I am also of the considered opinion that no Court can take cognizance of any offence indicated in the chargesheet under Section 188 of IPC in absence of written complaint by the officer authorized for that purpose in view of the specific bar of Section 195 Cr.P.C. The provisions of Section 195 Cr.P.C. are mandatory and non-compliance of it would vitiate the prosecution and other consequential orders.

12. In the present case, notably, the complaint has not been filed by the officer who has issued proclamation under Section 144 of Cr.P.C., therefore, the trial court could have not taken cognizance of the chargesheet indicating the offence under Section 188 IPC. Besides other offences i.e. Section 143 IPC: Punishment of unlawful assembly and Section 342: Punishment

for wrongful confinement since form part of the same transaction of the offence contemplated under Section 195(1) of Cr.P.C., so it is not possible to split up and hold that prosecution of the accused for the other offences, inasmuch as the genesis of other offences depends under Section 188 IPC. To me, had it not been any proclamation under Section 144 Cr.P.C. there would have been no offence of the petitioner under Section 188 IPC. Further, the offence of unlawful assembly is also part and parcel of Section 188 IPC. On account of the promulgation order, the offence of wrongful confinement in the present case is said to have been committed by the petitioner alongwith so many persons who have gathered when promulgation order was in operation and due to that some persons of public and vehicles thereof stucked in jam.

13. In view of the above and having regard to the dictum of Apex Court in re: **D.K. Rajendran** (supra), I am in agreement with the decisions of Karnataka High Court and Gujarat High Court and to that extent I am respectfully disagreeing with the decision of Jharkhand High Court in Re: **Amitabh Choudhary** (supra).

14. In view of the above, the present petition under Section 482 Cr.P.C. is **allowed**. The impugned complaint, chargesheet dated 24.11.2019, summoning order dated 12.02.2020 and the proceedings of Criminal Case No. 2355 of 2020, State Vs. Israr Ahmad and Others, arising out of Case Crime No. 839 of 2019, under Sections 143, 188, 342 IPC, Police Station Kotwali Nagar, District Pratapgarh, pending in the court of learned Chief Judicial Magistrate, Pratapgarh, are hereby quashed.

15. No order as to costs.

[Rajesh Singh Chauhan,J.]

**Order Date :- 3.1.2024**

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