IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-453-2023
Reserved on:01.12.2023
Pronounced on: 06.12.2023

Charanjit Singh @ Channi .....Petitioner

Vs.

State of Punjab .....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate
Mr. Prabhdeep S. Bindra, Advocate
Ms. Nalini Singh, Advocate and
Mr. Amanpreet S. Pannu, Advocate
for the petitioner.

Mr. Ferry Sofat, Addl. AG, Punjab.

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ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
42	18.02.2022	City-1, Mansa, District Mansa	188 IPC

1. The petitioner, who is Former Chief Minister for the State of Punjab, aggrieved by the registration of FIR captioned above, has come up before this court under section 482 CrPC for its quashing and further proceedings.

2. The above captioned FIR was registered against the petitioner, who at that time was Chief Minister for the State of Punjab, and Shubhdeep Singh @ Sidhu Moosewala (Since expired). On 18.02.2022, District Election Officer-cum-Deputy Commissioner, Mansa, had sent a complaint to the Senior Superintendent of Police, Mansa, informing that Chief Minister Shri Charanjit Singh @ Channi along with Shubhdeep Singh @ Sidhu Moosewala (since expired), is on election campaign asking for votes from door to door, after the expiry of campaigning time i.e. 6 pm. Based on the above information, the concerned SHO registered the captioned FIR against the petitioner Charanjit Singh and Sidhu Moosewala.

3. Facts of the case are that during the assembly elections of 2022, when the Model Code of Conduct had come into force in the State of Punjab, Dr. Vijay Singla, who was

contesting as MLA from Aam Aadmi Party from Mansa Constituency, gave a written complaint to the office of Chandresh Kumar Yadav, Election Observer Mansa Constitutency-96. He alleged that the petitioner-Charanjit Singh @ Channi and Shubhdeep Singh @ Sidhu Moosewala held an election rally at Mansa near Triveni Mandir and further he also held door to door campaigning in Mansa, after stipulated hours which continued after 6 pm. It is also alleged that Shubhdeep Singh @ Sidhu Moosewala, was the candidate of the Congress Party in Mansa Constituency andwas also with the petitioner. The District Election Officer forwarded this information to Deputy Commissioner Mansa, who made a complaint to Senior Superintendent of Police, Mansa and consequently, the above captioned FIR was registered against petitioner Charanjit Singh @ Channi and Shubhdeep Singh @ Sidhu Moosewala for the commission of an offence under Section 188 IPC becasue Deputy Commissioner Mansa had invoked Section 144 CrPC vide order dated 14.02.2022 and the same was in operation at the relevant time.

4. It would be appropriate to extract relevant portion of the investigation from the reply filed by the concerned DySP, which reads as follows: -

> *"It was also found that the relevant point of time vide the orders dated 14.02.2022, passed by the Deputy Commissioner Mansa, District Mansa, provision of section 144 CrPC was in-force and the election campaign shall come to an end after 06.00 PM on 14.02.2022. In the light of Chapter No.8, Section 8.2(8.2.1) of Model Code of Conduct Manual. Petitioner Charanjit Singh @ Channi along with 400/200 persons and Shubhdeep Singh @ Sidhu Moosewala, were reported to be campaigning door to door, after 6.00 pm on 14.02.2022, in the presence of F.S.T. Team of the Civil Department. As such, on the written complaint of Deputy Commissioner Mansa bearing No.252/Complaint Cell/Assembly Elections-22, dated 18.02.2022, present case FIR rightly registered against the accused persons including the petitioner, on report of fact that petitioner Charanjit Singh @ Channi and Shubhdeep Singh @ Sidhu Moosewala had deliberately breached the orders passed by the Deputy Commissioner Mansa and that of provisions of Model Code of Conduct, which attracts the provision of section 188 IPC."*

5. After completing the investigation, since Shubhdeep Singh @ Sidhu Moosewala had expired on 29.05.2022, the investigating officer filed a challan against the petitioner on 01.07.2022. In para 4 of the preliminary submissions of the reply, it is explicitly mentioned that FIR was registered on the written complaint of the Deputy Commissioner, Mansa. After completion of the investigation, a challan was filed against the petitioner Charanjit Singh @ Channi seeking his prosecution.

6. I have heard counsel for the parties and gone through the pleadings.

7. It would be appropriate to extract para 6 of the preliminary submissions of the reply dated 22.08.2023, which reads as under: -

> "6. That accused Shubhdeep Singh @ Sidhu Moosewala had expired on 29.05.2022 and on completion of investigation challan against the petitioner Charanjit Singh @ Channi was presented by the investigating officer, before the Ld. Trial Court on 01.07.2022 and now the trial of the case is pending for 01.11.2023, for appearance of the petitioner".

8. The fundamental reason to disrupt the criminal trial is the express bar of Section 195 CrPC, which applies to the facts of the present case on all fours. Section 195[1] CrPC clearly states that the Court cannot take Cognizance of the Police Report/Challan. Compliant is defined under section 2(d)[2] of CrPC, which excludes the Police Report/Challan under section 173 CrPC, and the cognizance can be taken only on a complaint filed by the complainant in Court under section 200 of CrPC. Neither the police report/Challan under section 173(2)[3] CrPC could have been filed in the Court, nor could the Court have taken cognizance of the offence based on such a police report.

9. In C. Muniappan and ors. v. State of Tamil Nadu, (2010) 9 SCC 567, Supreme Court of India has declared Section 195 CrPC as mandatory, and it holds,

> [28]. Section 195(a)(i) Cr.PC 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

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[1]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
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except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.
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[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, thecommission of a 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;

[3]**173. Report of police officer on completion of investigation**.—(*1*) Every investigation under this Chapter shall be completed without unnecessary delay.
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(*2*) (*i*) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrateempowered to take cognizance of the offence on a police report, a report in the form prescribed by the StateGovernment, stating—
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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.PC 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.PC 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 MANU/SC/0106/1971 : AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat AIR 1971 SC 1935; Surjit Singh and Ors. v. Balbir Singh (1996) 3 SCC 533; State of Punjab v. Raj Singh and Anr. (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy and Ors. (2005) 7 SCC 352 and Iqbal Singh Marwah and Anr. v. Meenakshi Marwah and Anr. (AIR 2005 SC 2119).

[29]. The test of whether there is evasion or non-compliance of Section 195 Cr.PC 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 and Ors. v. The State of West Bengal (AIR 1953 SC 293) and Durgacharan Naik and Ors. 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.PC. 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 and Anr. (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.
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> (Emphasis added)

[31]. In Sachida Nand Singh and Anr. v. State of Bihar and Anr. (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.
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> (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.PC. 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.
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> (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.PC 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.

10. In State of U.P. v. Mata Bhikh and Ors., (1994) 4SCC 95, Supreme Court, holds,

> [6]. The object of this Section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or illwill or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this Section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the Section without which the trial under Section 188 of the Indian Penal Code becomes void ab initio. See Daulat Ram v. State of Punjab 1962 (Supp.) 2 SCR 812.
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> To say in other words a written complaint by a public servant concerned is sine qua non to initiate a criminal proceeding under Section 188 of the IPC against those who, with the knowledge that an order has been promulgated by a public servant directing either 'to abstain from a certain act, or to take certain order, with certain property in his possession or under his management' disobey that order. Nonetheless, when the Court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the Section itself which is to the effect that no Court can take cognizance of any offence punishable under Section 172 to 188 of the IPC except on the written complaint of 'the public servant concerned' or of some other public servant to whom he (the public servant who promulgated that order) is administratively subordinate.
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> [15]. On a scrutiny of Section 195(1)(a), we are of the view that a

> successor in office of a public servant concerned will also fall within the ambit of the expression 'public servant concerned'. Any other view contrary to it will only create difficulties in certain situations. For example, in a case where a public servant concerned promulgates a preliminary order under Section 133, 145 or 146 of the CrPC and is transferred or retires or ceases to be in office on any account before a final order is passed, would it mean that the successor who is under the law to continue the same proceeding has no right to file a complaint if the preliminary order is disobeyed. The answer would be that the successor in office can file a complaint. In every such situation, one cannot expect the superior officer to whom the public servant is administratively subordinate to file a complaint against the wrongdoers disobeying either the preliminary order or the final order promulgated by the public servant concerned.

11. In Saloni Arora v. State of NCT of Delhi, (2017)3SC C 286, Supreme Court holds,

> [11]. It is not in dispute that in this case, the prosecution while initiating the action against the Appellant did not take recourse to the procedure prescribed Under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the Appellant insofar as it relates to the offence Under Section 182 Indian Penal Code is concerned, is rendered void ab initio being against the law laid down in the case of Daulat Ram (AIR 1962 SC 1206) quoted above.

12. Given the express provisions provided under Section 195 of the CrPC, 1973, criminal prosecution under sections 172 to 188 (both inclusive) cannot be launched by filing a police report under section 173 CrPC but can only be initiated by the concerned public servant by filing a complaint under section 190[4] (a) CrPC and not under 190(b) CrPC; and the concerned Court is empowered to take cognizance only when it is filed by the persons as mentioned in section 195 CrPC and not otherwise.

13. In the present case, the prosecution was launched by filing a police report under section 173 (2) CrPC for the commission of an offence punishable under section 188 IPC, whereas section 195(1)(a)(i) bars the Court from taking cognizance of any offence punishable under Section 188 of the IPC unless there is written complaint by the public servant concerned for contempt of their lawful order. The police report not being complaint, could not have been made the basis for taking cognizance of the offence under section 188 of the IPC, and the concerned Court had no jurisdiction to summon the accused. Given above, the order of dismissal of the application for discharge violates

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[4]190. Cognizance of offences by Magistrates.—(*1*) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (*2*), maytake cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

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the mandatory provision of section 195(1) of CrPC, 1973.

14. Given the above, the present petitions are allowed. The complaint dated 25.02.2021 and the police report (Challan) under Section 173 CrPC filed in FIR No. 42 dated 18.02.2022 are quashed and set aside. Consequently, all further proceedings are also quashed and set aside. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

06.12.2023
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Whether speaking/reasoned: Yes
Whether reportable: YES.