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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.310 of 2020

Order reserved on: 27-8-2020

Order delivered on: 7-10-2020

Dr. Apurva Ghiya, aged about 25 years, D/o Shree Rajesh Ghiya, R/o Ward No.15, Main Road, Ambagadh Chowki, District Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through Collector, District Rajnandgaon (C.G.)
2. Superintendent of Police, District Rajnandgaon (C.G.)
3. Chief Municipal Officer, Nagar Panchayat, Ambagadh Chowki, District Rajnandgaon (C.G.)
4. Chief Medical and Health Officer, District Rajnandgaon (C.G.)
5. Station House Officer, Police Station Ambagad Chowki, District Rajnandgaon (C.G.)

---- Respondents

For Petitioner: Mr. Shalvik Tiwari, Advocate.
For Respondents No.1, 2, 4 and 5 / State: -
Dr. Veena Nair, Deputy Advocate General and
Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.
For Respondent No.3: -
Mr. Rajesh Kumar Kesharwani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Proceedings of this matter have been taken-up for final hearing through video conferencing.

2. The petitioner is a young medical graduate. She after passing her graduate examination (MBBS), decided to prepare for civil services examination and was staying at New Delhi since last

few months and meanwhile, in March, 2019, COVID-19 stepped-in followed by countrywide lock-down and closure of transport facility and she was strained at New Delhi. When the position eased, she applied for issuance of E-pass for travelling from New Delhi to the State of Chhattisgarh to her home town situated at Ambagarh Chowki, District Rajnandgaon and accordingly, she was granted E-pass by the State of Chhattisgarh. She reached Rajnandgaon on 7-6-2020 and next day, she got herself examined at Community Health Centre, Ambagarh Chowki and also informed the Chief Medical & Health Officer, Rajnandgaon on 10-6-2020 about her arrival, but she failed to inform to the Chief Municipal Officer, Nagar Panchayat, Ambagarh Chowki – respondent No.3 herein, about her arrival from New Delhi that she came from other State as required by the order dated 18-5-2020 passed by the Collector-cum-District Magistrate, Rajnandgaon and thereafter, she was also tested Corona positive pursuant to which on 18-6-2020, respondent No.3 – Chief Municipal Officer, Nagar Panchayat, Ambagarh Chowki, lodged first information report (FIR) at Police Station: Ambagarh Chowki informing that though she reached from New Delhi to Ambagarh Chowki, Distt. Rajnandgaon, on 7-6-2020, but she did not inform the same as mandated by the Collector and she has been tested Corona positive and she has been admitted in the hospital, as such, offence under Section 188 of the IPC be registered against her and therefore action be taken against her pursuant to which FIR No.112/2020 dated 18-6-2020 has been registered by Police

Station: Ambagarh Chowki for offence under Section 188 of the IPC which is sought to be quashed in this writ petition by the petitioner herein.

3. The petitioner seeks quashment of above-stated FIR principally on the ground that by virtue of the provision contained in Section 195(1)(a)(i) of the Code of Criminal Procedure, 1973 (for short, 'the Code'), for offence under Section 188 of the IPC, no cognizance can be taken by the Magistrate unless complaint in writing is made by the public servant concerned and therefore police cannot register FIR under Section 154 of the Code and investigate the case and thereafter, file complaint, as such, since cognizance of the offence can be taken in a particular manner on a complaint filed by the public servant, cognizance of the offence under Section 188 of the IPC on the police report is absolutely barred and therefore no FIR under Section 154 of the Code can be registered for offence punishable under Section 188 of the IPC. It has also been pleaded that the order dated 18-5-2020 was never promulgated by the Collector in the official gazette or by beat of drum, therefore, she did not have information about the same and as such she could not inform the Collector about her arrival though she herself submitted her for medical examination on the next day of her arrival, on 8-6-2020 which is apparent from the documents Annexures P-3 & P-5, however, it is a pure and simple technical error and the State is having complete information as she came from Delhi to Rajnandgaon after E-pass having been granted by the State Government, therefore,

for technical omission of not informing to the Chief Municipal Officer, Nagar Panchayat, Ambagarh Chowki who is an officer subordinate to the State Government / District Collector, it cannot be held that she has omitted to comply the order dated 18-5-2020 issued by the Collector. Even otherwise, respondent No.3 Chief Municpal Officer being subordinate to the Collector cannot make report / lodge FIR for offence under Section 188 of the IPC, as such, the FIR deserves to be quashed in the light of the judgment rendered by the Supreme Court in the matter of **State of Haryana and others v. Bhajan Lal and others**[1].

4. Return has been filed by the State / respondents No.1, 2, 4 & 5 stating inter alia that the petitioner though is a medical graduate, yet, she failed to inform the Chief Municipal Officer as per the notification dated 18-5-2020 issued by the District Magistrate and thereby she remained moving here and there and also spread the dreadful disease (COVID-19) to number of persons of the locality including servants working in the grocery shop run by her father, therefore, FIR has rightly been lodged against her for commission offence under Section 188 of the IPC which cannot be taken exception to by her, as such, the writ petition deserves to be dismissed.

5. Mr. Shalvik Tiwari, learned counsel appearing for the writ petitioner would submit that offence under Section 188 of the IPC can be taken cognizance of by the jurisdictional Magistrate only on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively

1 1992 Supp (1) SCC 335

subordinate. Such a provision contained in Section 195(1)(a)(i) of the Code is mandatory in nature, therefore, cognizance for offence under Section 188 of the IPC cannot be taken on the basis of police report and cognizance can only be taken on the complaint in writing as defined under Section 2(d) of the Code and as such, FIR for offence under Section 188 of the IPC cannot be registered against the petitioner under the provision contained in Section 154 of the Code and investigation cannot be done by Police Station: Ambagarh Chowki. Mr. Tiwari, learned counsel, would further submit that order dated 18-5-2020 (Annexure P-10) alleged to be promulgated by the Collector-cum-District Magistrate was not never duly promulgated as neither it was published in the official gazette nor it was promulgated by beat of drum in the locality, therefore, the petitioner was not aware of the said order and thus, it cannot be held that she has committed the offence under Section 188 of the IPC, particularly when she has submitted herself for medical examination to the Community Health Centre and also reported to the Chief Medical & Health Officer and Block Medical Officer which is evident from Annexure P-3, as such, the impugned FIR deserves to be quashed.

6. Dr. Veena Nair, learned Deputy Advocate General, and Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate, appearing on behalf of the State / respondents No.1, 2, 4 & 5, would submit that offence under Section 188 of the IPC is cognizable offence and therefore police is duty bound to

register FIR against the petitioner in view of the provision contained in Section 154 of the Code immediately on an information and proceed to investigate the case under Sections 156 & 157 of the Code and thereafter, file final report under Section 173 of the Code. They would further submit that by virtue of Section 195(1)(a)(i) of the Code, taking cognizance of offence punishable under Sections 172 to 188 of the IPC is barred except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate; that does not mean that police cannot register offence and investigate the cognizable offence and the bar as contained in Section 195(1)(a)(i) of the Code cannot stretch to such an extent barring the registration of FIR under Section 154 of the Code. The order of the Collector was duly promulgated and the petitioner by not informing about her arrival to the Chief Municipal Officer – respondent No.3, has contributed in spreading the dreadful disease i.e. Corona Virus in the locality and as such, the FIR has rightly been registered against her and the writ petition deserves to be dismissed.

7. Mr. Rajesh Kumar Kesharwani, learned counsel appearing for respondent No.3, would also submit in same line as submitted by the State counsel and would submit that FIR has rightly been registered against the petitioner at the instance of the Chief Municipal Officer, Nagar Panchayat, Ambagarh Chowki and the writ petition deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went

through the record with utmost circumspection.

9. The question that would emanate for consideration is, whether FIR can be registered under Section 154 of the Code for offence under Section 188 of the IPC and whether such an offence can be investigated by the police in view of the provision contained in Section 195(1)(a)(i) of the Code?

10. In order to decide the dispute, it would be appropriate to notice the definition of "cognizable offence" contained in Section 2(c) of the Code which states as under: -

> "(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;"

Section 2(d) of the Code defines "complaint". It states as under: -

> "(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.
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> *Explanation*.—A report made by a police officer in a case which discloses, after investigation, the commission 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;"

Section 2(h) of the Code defines "investigation" which is as follows: -

> "(h) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate

in this behalf;"

"Police report" is defined in Section 2(r) of the Code which is as under:-

> "(r) "police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;"

11. Chapter XII of the Code states about information to the police and their powers to investigate. Section 154 of the Code speaks about information in cognizable cases. Sub-section (1) of Section 154 provides that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. Section 155 deals with information as to non-cognizable cases and investigation of such cases. Section 156 enumerates police officer's power to investigate cognizable case. Section 173 provides for report of police officer given on completion of investigation. Section 190 provides for cognizance of offences by Magistrates. Section 195 prohibits the Court from taking cognizance of the offences mentioned therein except on the complaint in writing by the persons named therein.

12. At this stage, it would be appropriate to notice Section 195(1)(a)(i) of the Code which states 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—
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> (a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
>
> (ii) xxx xxx xxx
>
> (iii) xxx xxx xxx
>
> except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;"

13. The object of the above-stated provision is to protect persons from being needlessly harassed by vexatious prosecutions in retaliation. It is a check to protect innocent persons from criminal prosecution which may be activated by malice or ill will.

14. A careful perusal of Section 195(1) of the CrPC would show that the general rule is that any person having knowledge may set the law in motion by making a complaint, even though he is not the person interested in or assisted by the offence to the general rule. Section 195 of the Code provides an exception and forbids cognizance having been taken of the offence referred to therein except on the complaint in writing by the court or by some other court to which such court is subordinate. (See **Lalji Haridas v. The State of Maharashtra and another**[2].)

15. In the matter of **Basir-ul-Huq and others v. The State of West Bengal on the complaint of Dhirendra Nath Bera**[3], the Supreme

2 AIR 1964 SC 1154
3 AIR 1953 SC 293

Court qua Sections 182 & 188 of the IPC, held as under: -

> "(9) Section 195, Criminal P.C., on which the question raised is grounded, provides *inter alia*, that no Court shall take cognizance of an offence punishable under Ss. 172 to 188, Penal Code, except on the complaint in writing of the public servant concerned, or some other public servant to whom he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence under S. 182 can be taken cognizance of. ..."

16. In the matter of **Daulat Ram v. State of Punjab**[4], the Supreme Court has held that there is an absolute bar against the court taking seisin of the case under Section 182 of the IPC except in the manner provided by Section 195 of the CrPC. It was further held that the complaint must be in writing by the public servant concerned and trial under Section 182 of the IPC without complaint in writing is therefore without jurisdiction ab initio.

17. Similarly, in the matter of **Govind Mehta v. The State of Bihar**[5], their Lordships of the Supreme Court have held that Section 195 of the CrPC is in fact a limitation on the unfettered powers of a magistrate to take cognizance under Section 190, he must examine the facts of the complaint before him and determine whether his power of taking cognizance under Section 190 has or has not been taken away by any of the clauses (a) to (c) of Section 195(1). It was further held that if there is a non-compliance with the provisions of Section 195, the Magistrate will have no jurisdiction to take cognizance of any of the offences enumerated therein.

4 AIR 1962 SC 1206
5 AIR 1971 SC 1708

18. Likewise, in the matter of **C. Muniappan and others v. State of Tamil Nadu**[6], their Lordships of the Supreme Court held that the provisions of Section 195 of the CrPC are mandatory and non-compliance of the same would vitiate the prosecution. It was observed as under: -

> "33. Thus, in view of the above, the law can be summarised to the effect that there must be a complaint by the pubic 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 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."

19. The principle of law laid down in **C. Muniappan** (supra) has been followed with approval by their Lordships of the Supreme Court in the matter of **Babita Lila and another v. Union of India**[7] in which it has been held as under: -

> "46. That the provisions of Section 195 of the Code are mandatory so much so that non-compliance thereof would vitiate the prosecution and all consequential orders, has been ruled by this Court, amongst others in *C. Muniappan v. State of T.N.* (supra) wherein the following observations in *Sachida Nand Singh v. State of Bihar*[8] were recorded with approval: (SCC pp. 497-98, para 7)
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> > "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

6 (2010) 9 SCC 567
7 (2016) 9 SCC 647
8 (1998) 2 SCC 493

that extent curtained. 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)"

20. In the matter of **State of U.P. v. Mata Bhikh and others**[9], their Lordships of the Supreme Court, with respect to Section 195(1)(a)(i) of the Code, held as under: -

"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 ill-will 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* (supra). 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 Sections 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."

21. Similarly, in **Sachida Nand Singh**[8] (supra), their Lordships of the

9 (1994) 4 SCC 95

Supreme Court while dealing with the issue held as under: -

> "7. Even if the clause is capable of two interpretations we are inclined to choose the narrower interpretation for obvious reasons. 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 (*Abdul Waheed Khan v. Bhawani*[10])."

22. In the matter of **M.S. Ahlawat v. State of Haryana and another**[11], the Supreme Court held that the provisions of Section 195 of the Code 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.

23. In the matter of **Jeewan Kumar Raut and another v. Central Bureau of Investigation**[12], which is the case under the Transplantation of Human Organs Act, 1994 (TOHO Act) of which Section 22 stipulates that no court shall take cognizance of an offence under this Act except on a complaint made by the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the State Government or, as the case may be, the Appropriate Authority; their Lordships of the Supreme Court considered the question whether the authorised officer has power to investigate as per

10 AIR 1966 SC 1718
11 AIR 2000 SC 168
12 (2009) 7 SCC 526

the provisions of the Code, expressing doubt, it was held as under:-

> "25. Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a complaint earlier to it as laid down therein. The respondent, although, has all the powers of an investigating agency, it expressly has been statutorily prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the question of its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no police report could be filed, sub-section (2) of Section 167 of the Code was not attracted.
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> 28. To put it differently, upon completion of the investigation, an authorised officer could only file a complaint and not a police report, as a specific bar has been created by Parliament. In that view of the matter, the police report being not a complaint and vice versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO.
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> 36. We are, however, not oblivious of some decisions of this Court where some special statutory authorities like authorities under the Customs Act have been granted all the powers of the investigating officer under a special statute like the NDPS Act, but, this Court has held that they cannot file charge-sheet and to that extent they would not be police officers. (See *Ramesh Chandra Mehta v. State of W.B.*[13] and

13 AIR 1970 SC 940

Raj Kumar Karwal v. Union of India[14].)

> 37. In the present case, however, the respondent having specially been empowered both under the 1946 Act as also under the Code to carry out investigation and file a charge-sheet is precluded from doing so only by reason of Section 22 of TOHO. It is doubtful as to whether in the event of authorisation of an officer of the Department to carry out investigation on a complaint made by a third party, he would be entitled to arrest the accused and carry on investigation as if he is a police officer. We hope that Parliament would take appropriate measures to suitably amend the law in the near future."

24. In the matter of **Saloni Arora v. State of NCT of Delhi**[15] wherein, in violation of the provisions contained in Section 195(1)(a) of the Code, the accused was prosecuted for the offence punishable under Section 182 of the IPC, their Lordships of the Supreme Court quashed the complaint following the judgment of the Supreme Court in **Daulat Ram** (supra) and held as under:-

> "12) 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 IPC is concerned, is rendered void ab initio being against the law laid down in the case of *Daulat Ram* (supra) quoted above."

25. The Madras High Court in the matter of **Jeevanandham and others v. State and another**[16] clearly held that a Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of the IPC and observed as under: -

> "25. In view of the discussions, the following

14 (1990) 2 SCC 409
15 AIR 2017 SC 391
16 2019(1) MLJ (Cri) 36

guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C. will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C. and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and

iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C."

26. In an extremely recent judgment in the matter of **Union of India v. Ashok Kumar Sharma and others**[17], their Lordships of the Supreme Court while considering registration of FIR by the police in the light of the provisions contained in Section 32 of the Drugs and Cosmetics Act, 1940, held as under: -

"150. Thus, we may cull out our conclusions/directions as follows:

I. In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also

17 Criminal Appeal No.200 of 2020, decided on 28-8-2020

the scheme of the CrPC, the Police Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

II. There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law.

III. Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.

IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in *D.K. Basu v. State of West Bengal*[18] and to follow the provisions of CrPC.

V. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact, evidenced by the facts of the present case, police officers would have made arrests in regard to offences under

18(1997) 1 SCC 416

> Chapter IV of the Act. Therefore, in regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences under Chapter IV of the Act, will operate with effect from the date of this Judgment.
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> VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but also immediately report the arrests to their superior Officers."

27. The Supreme Court in the matter of **Ushaben v. Kishorbhai Chunilal Talpada and others**[19] referring to the Explanation appended to Section 2(d) of the Code, clearly held that a report made by a police officer after investigation of a non-cognizable offence is to be treated as a complaint and the officer by whom such a report is made is to be deemed to be the complainant.

28. In the matter of **Chittaranjan Das v. State of West Bengal and others**[20], the Calcutta High Court has held that the words "it does not include a police report" in Section 2(d) of the Code refers to report under Section 173 of the Code after completion of investigation, not any other report by police officer.

29. Similarly, the Karnataka High Court in the matter of **Chandrasha and others v. The State**[21] has also held that charge-sheet on a cognizable offence is not complaint, it is police report.

30. From a conspectus of the aforesaid judgments rendered by their Lordships of the Supreme Court (supra) and the Madras High Court (supra), it is quite vivid that in order to prosecute an

19 (2012) 6 SCC 353
20 AIR 1963 Cal 191
21 1989 Cri. L.J. NOC 97 (Kant.)

accused for the offence punishable under Section 188 of the IPC, it is imperative to undergo the procedure envisaged under Section 195(1)(a)(i) of the Code i.e. complaint in writing of public servant concerned or some other public servant to whom he is subordinate, otherwise cognizance of offence under Section 188 of the IPC cannot be taken and if this imperative procedure is not complied with, the entire prosecution for offence under Section 188 of the IPC would be rendered *void ab initio*, as Section 195 of the Code is an exception to the general rule contained in Section 190 of the Code wherein any person can set the law in motion by making complaint. The provisions of Section 195 of the Code are mandatory and non-compliance with it will make the entire process *void ab initio* and without jurisdiction as well. As such, since cognizance of offence under Section 188 of the IPC can be taken on the basis of complaint in writing filed by the public servant concerned within the meaning of Section 2(d) of the Code, offence under Section 188 of the IPC being cognizable offence is not also saved by Explanation appended to Section 2(d) of the Code, as by Explanation to Section 2(d) of the Code, report made by police officer after investigation of non-cognizable offence is only to be treated as complaint and person making the complaint is to be treated as complainant and police report or FIR is not a complaint and further, charge-sheet is a report of police officer. Therefore, the first information report also cannot be registered under Section 154 of the Code for offence under Section 188 of the IPC, as

registration of FIR after investigation would culminate into police report under Section 173(8) of the Code which cannot be taken cognizance of by the Magistrate under Section 190 of the Code, as such registration of FIR for offence under Section 188 IPC is barred.

31. At this stage, the submission of learned State counsel that since the offence punishable under Section 188 of the IPC is a cognizable offence, therefore, police is duty bound to register FIR under Section 154 of the Code immediately on information as held by the Supreme Court in the matter of **Lalita Kumari v. Government of Uttar Pradesh and others**[22] and to proceed to investigate as provided under Sections 156(3) & 157 of the Code, deserves to be noticed. Such a submission is not acceptable, because, merely because the offence under Section 188 of the IPC is cognizable offence, that by itself does not authorise the police officer to register FIR under Section 154 of the Code for such offence, the reason being that the registration of FIR would necessarily result in submission of police report under Section 173(8) of the Code which is specifically barred by Section 195(1)(a) read with Section 2(d) of the Code. The definition of "complaint" contained in Section 2(d) of the Code makes it clear that complaint does not include a police report. Their Lordships of the Supreme Court in **Ashok Kumar Sharma's** case (supra), in the light of Section 32 of the Drugs and Cosmetics Act, 1940, held that the principles laid down in **Lalita Kumari** (supra) could not be applicable to

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registration of FIR for offence under the Drugs and Cosmetics Act, 1940 and observed as under: -

> "66. We would think that this Court was not, in the said case, considering a case under the Act or cases similar to those under the Act, and we would think that having regard to the discussion which we have made and on a conspectus of the provisions of the CrPC and Section 32 of the Act, the principle laid down in *Lalita Kumari* (supra) is not attracted when an information is made before a Police Officer making out the commission of an offence under Chapter IV of the Act mandating a registration of a FIR under Section 154 of the CrPC."

As such, the argument raised in this behalf by the learned State Counsel deserves to be rejected following the principle of law laid down in this behalf by their Lordships of the Supreme Court in **Ashok Kumar Sharma's** case (supra).

32. The next submission of Mr. Shalvik Tiwari, learned counsel appearing for the petitioner, is that the order dated 18-5-2020 was not promulgated by beat of drum or by publication of notification in the official gazette, therefore, it was not an order which can be taken cognizance of and for violation of which the petitioner cannot be prosecuted under Section 188 of the IPC. This submission is a premature submission to be noticed, as the petitioner has come to this Court for quashment of the FIR and FIR is not an encyclopedia of the entire prosecution case and nothing further has been brought on record to demonstrate the said fact. Therefore, such a submission is premature and at this stage, it would be inappropriate to deal with such submission in detail and to record a finding on the same.

33. In **Bhajan Lal's** case (supra), the Supreme Court laid down the

parameters in paragraph 102 of its report for quashing criminal proceeding / FIR exercising jurisdiction under Article 226 of the Constitution of India or under Section 482 of the Code, relevant portion of which states as under: -

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) to (5) xxx xxx xxx
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> (7) xxx xxx xxx"

34. Resultantly, it is held that for the offence punishable under Section 188 of the IPC, no FIR can be registered under Section 154 of the Code in the light of the legal analysis and discussion made herein-above. Accordingly, FIR No.112/2020 dated 18-6-2020 registered against the petitioner by Police Station: Ambagarh Chowki, Distt. Rajnandgaon for the offence

punishable under Section 188 of the IPC is hereby quashed following the decision of the Supreme Court in **Bhajan Lal's** case (supra).

35. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Cr.) No.310 of 2020

Dr. Apurva Ghiya

Versus

State of Chhattisgarh and others

Head Note

No first information report under Section 154 of the CrPC can be registered for offence under Section 188 of the IPC.

भारतीय दण्ड संहिता की धारा 188 अंतर्गत किये गये अपराध के लिये दण्ड प्रक्रिया संहिता की धारा 154 अंतर्गत कोई प्रथम सूचना प्रतिवेदन पंजीबद्ध नहीं किया जा सकता।