

The High Court of Madhya Pradesh

WP.13544.2020

[Ashish Pratap Singh Vs. State of M.P. & Ors]

Gwalior dated 12.10.2020

Shri Veer Singh Sisodiya & Shri Suresh Agarwal, learned counsel for the petitioner.

Shri Ankur Mody, learned Additional Advocate General for the respondent/State.

Shri D.K. Katare, learned Standing counsel for the Election Commission of India.

Shri Praveen Newaskar, learned ASGI for the Union of India.

Shri Rajiv Sharma, learned counsel for the intervenor.

Shri Sanjay Dwivedi, Shri Raju Sharma and Shri V.D. Sharma, learned counsel as *Amicus Curiae*.

1. Learned counsel for rival parties are heard alongwith learned *Amicus Curiae* Shri Sanjay Dwivedi, Shri Raju Sharma, and Shri V.D.Sharma, Advocates through video conferencing.

2. *Amicus Curiae* have jointly filed 3rd report pointing out that despite passing of interim order by this court, there have been several occasions of breach of Covid-19 protocol by gatherings/congregations comprising of persons in number which far exceeds the limit prescribed by Covid-19 protocol. The report of *Amicus Curiae* also reveals that number of infected persons and casualties due to spread of Covid-19 is on the rise

in and around Gwalior district. The said 3rd report is accompanied by phonographs of various meetings/congregations held primarily by political parties owing to bi-election announced in various legislative assembly constituencies in and around the district of Gwalior.

3. The petitioner has also moved I.A. 6084/2020 pointing out that after passing of interim order on 3/10/2020 by this court, congregation of large number of people ranging from 300 to 500 took place on 3/10/2020 at Baghel Chhatrawas Naka Chandrawani Road, Lashkar, Gwalior organized by Shri Munnalal Goel, former MLA on 4/10/2020 at Gwalior legislative assembly constituency for and on behalf of Shri Pradyumna Singh Tomar, former MLA on 4/10/2020 again at Ward No. 19 Gwalior for and on behalf of Shri Satish Singh Sikarwar, candidate of Indian National Congress on 5/10/2020 at Mody House opposite Landmark Hotel for and on behalf of Shri Narendra Singh Tomar, Hon. Minister in Central Cabinet and M.P. Morena and on 5/10/2020 again at Bhandar District Datia for and on behalf of Shri Kamalnath, former Chief Minister of the State of M.P., and Shri Phool Singh Baraiya candidate Indian National Congress and on 6/10/2020 at Ward No. 1 Gwalior for and on behalf of Shri Ramniwas Rawat and Shri Sunil Sharma candidate Indian National Congress wherein breach of Covid-19 protocol took place in as much as failure of large number of people in wearing mask including

political functionaries for and on behalf of whom the said congregations were held without maintaining any social distancing.

3.1 In the said I.A.6084/20 prayer is made for taking appropriate action against political functionaries and the District Authority who caused breach of Covid-19 protocol and who failed to prevent the same respectively.

3.2 Another I.A.6066/20 has been moved by petitioner praying for stay of the order of Central Govt. dated 6/10/2020 and the consequential order of the State of M.P. dated 8/10/2020 relaxing Covid-19 guidelines by allowing congregations of more than 100 persons in open ground though after maintaining Covid-19 guidelines regarding social distancing, face mask, sanitation and thermal screening.

3.3 An application for intervention is also filed vide I.A.6149/20 whereby one Hemant Singh Rana has prayed for intervention and for being impleaded as respondent No.6 in this petition by revealing that intervenor had filed W.P. 12028/2020 (Hemant Singh Rana Vs. State of M.P. & others) which was disposed of by this court finally on 24/8/2020 directing the Collector, S.P. of District Bhind to strictly follow Covid-19 protocol issued by the Central, State and the Supreme Court from time to time and to take action in the event of violation of guidelines.

3.4 **Considered I.A.6149/20** for intervention and impleadment on

behalf of Hemant Singh Rana. The same is partly allowed to the extent that intervenor is permitted to make his submissions before this court as and when case is listed. However, prayer for impleadment as party is declined. Said I.A. thus stands partly allowed.

3.5 **Considered I.A.6066/20** praying for stay of relaxation made by the Central and as well as State Govt as regards size of congregation. Learned counsel for the Central Govt. and the State and also learned counsel for the Election Commission of India are directed to file their replies to the same before the next date of hearing.

3.6 **Considered I.A.6084/20** in juxtaposition to the 1st, 2nd and 3rd reports of *Amicus Curiae* (Shri Sanjay Dwivedi, Shri Raju Sharma and Shri V.D. Sharma Advocates). It appears that on various dates, i.e. ,3rd, 4th, 5th and 6th October, 2020 in Districts Gwalior & Datia, congregations which took place reveal commission of cognizable offence punishable under the provision of Disaster Management Act 2005 and Indian Penal Code 1860 and the said information of commission of cognizable offence was submitted before the police but no consequential action of registering FIR u/S. 154 Cr.P.C. has been taken yet.

3.7 When confronted with the aforesaid situation, learned Additional Advocate General submits that veracity of the factum of holding of congregations on the dates as informed by petitioner and other sources

and the breach of Covid-19 protocol is being verified. Learned Additional Advocate General submits that as and when genuineness of the said information received is verified further course of action shall be taken.

3.8 Learned Additional Advocate General need not be reminded about law of the land in regard to statutory obligation cast upon the police u/S. 154 Cr.P.C. on receipt of information disclosing commission of cognizable offence. The Apex Court in its constitutional bench decision rendered in *Lalita Kumari Vs. Govt. of U.P. (2014) 2 SCC 1* held as follows :-

“Conclusion/Directions:

120. In view of the aforesaid discussion, we hold:

120.1 Registration of FIR is mandatory under [Section 154](#) of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2 If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3 If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4 The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.”

3.9 The aforesaid law laid down by Apex Court in *Lalita Kumari (s)*

exposits that on receipt of information regarding commission of cognizable offence, registration of offence is mandatory duty of police against the person who is alleged in the information of committing cognizable offence. The police cannot go into truthfulness, genuineness or veracity of the information of cognizable offence before registration of FIR. The verification about genuineness, veracity and truthfulness of the information can be gone into only after registration of offence, i.e. during the process of investigation.

4. In view of above situation especially the information received by the reports of *Amicus Curiae* and contents of I.A. 6084/20 filed by petitioner cognizable offence under IPC/Disaster Management Act *prima facie* appears to have been committed.

5. In view of the above and in continuation of direction in para 16-E of the interim order dated 3/10/2020 in this case, this court directs thus:-

(a) District Magistrates of Gwalior & Datia are directed to ensure taking of appropriate steps in terms of the law laid down by Apex Court in ***Lalita Kumari (s)*** by treating the contents of IA.6084/20 and the contents of three joint reports of the *Amicus Curiae* as information revealing commission of cognizable offence and register FIR against defaulting persons as per directive of this court contained in para 16-E of the interim order dated 3/10/2020 against all defaulting members of congregation and defaulting functionaries of the Govt./State/Political

Parties on whose behalf, behest and for whom and in whose presence congregations took place violating the Covid-19 protocol.

(b) Compliance report in regard to the above direction be filed by S.P., Gwalior & Datia before the next date of hearing.

(c) Interim order passed earlier by this Court on 3/10/2020 shall continue till next date of hearing and shall be applicable in respect of defaulting congregations which take place in near future in violation of prevailing Covid-19 protocol and the order of this Court dated 3/10/2020 at any of the 09 districts falling within the territorial jurisdiction of this Bench.

6. Copy of the order dated 03/10/2020 along with copy of the order passed today, accompanying copy of IA.6084/2020 and copy of three joint reports of *Amicus Curiae* shall be communicated to the District Magistrates, Gwalior & Datia and remaining 07 districts falling within the territorial jurisdiction of this Bench **latest by 14.10.2020** by electronic means and by hand (to District Magistrate, Gwalior).

List the case **on 19/10/2020**.

(Sheel Nagu)
Judge

(Rajeev Kumar Shrivastava)
Judge

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