

CRM-M-33988-2023 and connected cases

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-33988-2023
Reserved on:20.11.2023.
Pronounced on: 06.12.2023.

Madan Mohan Mittal and anotherPetitioners

Vs.

U.T. Chandigarh and othersRespondents

CRM-M-59436-2022

Arun NarangPetitioner

Vs.

U.T. Chandigarh and othersRespondents

CRM-M-60937-2022

Vijay Sampla and othersPetitioners

Vs.

U.T. Chandigarh and othersRespondents

CRM-M-60510-2022

Tikshan Sood and othersPetitioners

Vs.

U.T. Chandigarh and othersRespondents

CRM-M-60822-2022

Malwinder Singh Kang and anr.Petitioners

Vs.

U.T. Chandigarh and othersRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. N.K. Verma, Advocate and
Mr. Ankush Verma, Advocate
for the petitioner(s) in
CRM-M Nos.59436 & 60937-2022 and CRM-M-33988-2023.

Mr. Ravinder Rana, Advocate

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for the petitioner(s) in CRM-M-60822-2022.

Mr. Vijay Kumar Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate
Mr. Pankaj Gautam, Advocate
for the petitioner(s) in CRM-M-60510-2022.

Mr. Manish Bansal, PP, UT Chandigarh with
Mr. Navjit Singh, Advocate
for the respondent-U.T.

Mr. Shiva Khurmi, AAG, Punjab.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
150	21.08.2020	Central Sector 17, UT Chandigarh	188 IPC

1. This order shall dispose of all the petitions mentioned above. For brevity, facts have been taken from *CRM-M-33988-2023 titled Madan Mohan Mittal and another v. U.T. Chandigarh and others.*

2. The petitioners in all the petitions mentioned above, arraigned as accused in the above captioned FIR, have come up before this Court under Section 482 CrPC for quashing of the FIR and summoning order dated 02.09.2021 and all consequential proceedings arising from that place.

3. All these petitions have been filed by the petitioners challenging the police report filed under section 173 CrPC and the formal letter by the District Magistrate addressed to the Court, referring to the FIR No. 150 dated 21.08.2020 registered under section 188 IPC at Police Station Central, Sector 17, UT, Chandigarh, and summoning order dated 02.09.2021 and all the further proceedings before the Ld. JMIC, Chandigarh, includes the order dated 03.12.2022 passed by the Ld. JMIC, Chandigarh. In all these petitions, the petitioners are not only aggrieved by the dismissal of the application for discharge but are seeking quashing of the order taking cognizance and consequent notices/summons. In addition to the legal grounds, petitioners are also aggrieved that they did not commit any offence under Section 188 IPC because the administration did not comply with the provision of Section 134 CrPC and did not inform the general public of the area that Section 144 CrPC had been implemented in the area.

4. The F.I.R No. 150 dated 21.08.2020, registered under section 188 IPC at Police Station Central, Sector 17, U.T, Chandigarh, reads as follows:

"The SHO Sahib PS-17 Chandigarh Jai Hind it respectfully

submitted that I ASI along with Police Force under the Supervision of SHO PS-17 DSP Central was present near MC Office Sector 17 Chandigarh on duty for managing the Rally/Protest of BJP State Punjab. That Punjab BJP Leaders along with their supporters in large number come marching forward on foot for gherao the house of the Punjab CM and for protesting against the policies of Punjab Government In this area and the area beyond this, the Chandigarh administration had imposed section 144 Cr.P.C. for stopping 5 or more than 5 people from gathering. The orders of the Administration were read out to the leaders present in the protest. But they violated the order of the government DC Order/DM Order No. DM/MA2020/13928 dated 09.07.2020 and those leaders & their supporters were controlled using the Police Force, who on being asked told their name & Address as 1. Vijay Sampla s/o Darshan Lal (Ex-MP) R/o 1 Partap Nagar Chintapuri Road Hoshiarpur (PB) Age 59 Years, 2. Arun Narang S/o Vedprakash Narang R/o Street No. 23 Gau Shalla Road Abohar Distt. Fazilika Ex-MLA (PB). Age 64 years, 3. Master Mohan Lal S/o Nilkand Sharma R/o Street No. 04 Indra Colony Distt. Pathankot Age 73 Years, Ex-MLA Punjab, 4. Madan Mohan Mittal S/o Sh. Ramsarup Mittal R/o 3158 Sec. 21 D UT Chandigarh, Age 31 Years, Ex-MLA from Anandpur Sahib (PB), 5. Manoranjan Kalia S/o Man Mohan Kaliya R/o Central Town Jalandhar, 6. Dr. Baldev Chawla S/o Sh. Sunder Dass Chawla R/o Chawla Hospital inside Hathee Gate Amritsar (PB) Age-82 Years, Ex-MLA Amritsar, 7. Ashwani Sharma S/o Pandit Uma datt Sharma R/o New Sastri Nagar Pathankot PB. Age 54 Years, President BJP, 8. Tikshom Sood S/o Jagdish Ram R/o 1 Sharswati Vihar Jhodhamal Road Civil Line Hoshiarpur (PB) Age 65 yrs, EX-MLA Hoshiarpur Ex-Minister Punjab 9. Surjeet Kumar Jain S/o Sh. Sobhat Ram Jain R/o Vill. Katerda Dist. Fazilka PB Age-63 years, Ex-MLA Fazilka. 10. Tarun Chugh S/o Lt. Sh. Banarshi Dass Chugh R/o 44 Katra Motiram Hathee Gate Amritsar (PB) Age 49 Years, BJP Secretary, 11. K.D. Bhandari S/o Sh. Chaman Ram Bhandhari R/o 61 Seth Hukam Chand Colony Jalandhar Punjab Age 60 Years, Ex-CPS Punjab Govt. 12. Arunesh Shakar S/o B.M. Shakar R/o Mohlla Press Karan Mukeriyar Hoshiarpur (PB) Age 65 years, Ex-CPS Punjab Govt. 13. Anil Joshi S/o Lt. Sh. KishoriLal R/o 11 Nederal Enclev Amritshar Punjab Age 56 Years, Ex- Minister Punjab, 14. Dr. Subhash Sharma S/o Gurwinder Singh Sharma R/o Street No. 7 Sarhetha Amritsar Punjab, Age 42 Years, General Secretary BJP, Punjab, 15. Malwinder Singh Kang S/o Lt. Sh. Sakkater Singh R/o 2135 Sec-50 Chd. Age 41 years, PB, General Secretary BJP, Punjab, 16. Jiwan Gupta S/o Sh. Baldev Kumar Gupta R/o 52/23 Bharat Nagar Ludhiana Age 50 Years, General Secretary BJP, Punjab, 17. Arvind Mittal S/o M.M. Mittal R/o 3033 Sector 21-D Chandigarh Age 52 years, Secretary BJP Punjab, & Others. Despite them knowing and despite giving them guidelines, these above leaders along with their workers organised a protest and raised slogans. That above all leaders have violated the order of DM Sahib and have committed the offence u/s 188 IPC. That the offence u/s 188 IPC has been found to be made out against the above leaders Vijay Sampla, Arun Narang, Master Mohan Lal, Mahan Mohan Mittal, Manoranjan Kalia, Dr. Baldev Chawla, Ashwani Sharma, Tikshom Sood, Surjeet Kumar Jain, Tarun Chugh, K.D. Bhandari, Arunesh Shakar, Anil Joshi, Dr. Subhash Sharma, Malwinder Kang, Jiwan



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Gupta, Arvind Mittal and the case has been sent through C. Ishwar Kumar No. 3839/CP. The FIR number be informed after the registration of the case. I ASI, is busy at the spot for the investigation from Near MC Office Sec-17 CHD."

5. The Investigator/Officer-in-charge/SHO of the police station had filed the challan (Police report) before the JMIC on Sep 02, 2021. Vide an order dated Sep 02, 2022, the concerned JMIC took cognizance of the offence and issued notices to the accused. The petitioners filed an application dated Oct 11, 2022, seeking discharge, and the Union Territory filed its reply to the said application opposing such discharge. Vide the impugned order dated Dec 03, 2022, and the Chief Judicial Magistrate Chandigarh dismissed the application seeking discharge.

6. When the matter was being argued, then UT counsel had raised a specific objection that although prayer is for quashing of FIR and subsequent proceedings, it is pertinent to mention here that a summoning order dated 02.09.2021 was passed by the Chief Judicial Magistrate, Chandigarh, later on application filed by petitioner for discharge was dismissed, which had not been challenged. It was contended on behalf of UT that once a judicial order has been passed, then it has to be explicitly challenged because it cannot be quashed by making a general prayer in the quashing of FIR itself. On this, the petitioners had filed applications to amend the petitions and sought modification of the prayer. Vide order dated 14.11.2023, this Court had allowed all such applications, and prayer was deemed to have been amended, including the prayer for quashing the discharge order.

7. A perusal of the impugned order dated 03.12.2022 reveals that the order was passed on the premises that no Court could have taken any cognizance of the offence punishable under Section 188 IPC except upon a complaint in writing of a public servant concerned. After referring to the judgment passed by the Hon'ble Supreme Court of India, the Chief Judicial Magistrate concluded in para 9 of the order concluded that Section 195 CrPC does not bar the registration of FIR when an offence under Section 188 IPC is committed, for the reason that it is a cognizable offence and police can investigate the offence/case and can present the challan under Section 173 CrPC. As such, this Court could also take cognizance of such offence, and consequently, if the complaint was filed directly, even this Court could have taken cognizance. As such, given the challan (police report) filed by the State and the formal complaint addressed to the Court, along with the challan presented by the concerned District Magistrate, the Court could have taken cognizance.



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8. I have heard counsel for the parties and gone through the pleadings. An analysis of the same would lead to the following outcome.

9. The joint submissions for all the petitioners are that they have political affiliations and have always remained at the forefront of raising issues for the welfare of the people, being the representative of the people. Most petitioners were sitting or former MLAs and Ministers of Punjab and the Union Territory of Chandigarh. Their grievance was that more than one hundred people had died, and so many had fallen ill due to the consumption of illicit & spurious liquor in Punjab Hooch Tragedy. There was a hue and cry in the State of Punjab, and people were demanding justice and action against the guilty persons who were responsible for the death of 100 innocent civilians in the State of Punjab because the unscrupulous persons had sold illicit alcohol to them for their consumption. Given the magnitude of the tragedy, which had led to the devastating loss of more than a hundred families, there was an eerie gloom in the people. To apprise the public sentiments toward the Government, seek some aid to the devastated families, and stop such tragedies in the future, they decided to visit the Chief Minister of Punjab at his residence on 21.08.2020. The petitioners gathered in small groups and started from Sector 17, Chandigarh, to the residence of CM, Punjab, by taking proper precautions and preventive measures. However, before they could reach the house of the Chief Minister, ASI of Police Station Sector 17, Chandigarh arrested them and took them to the police station, where an FIR under Section 188 IPC was registered.

10. After completing the investigation, police presented a challan under Section 173 CrPC, as the concerned District Magistrate also filed a formal complaint under Section 195 CrPC. Feeling aggrieved, the accused had filed the applications for discharge, but the same was dismissed via an impugned judicial order dated 03.12.2022.

11. A perusal of the reply dated 28.07.2023, filed in CRM-M-33988-2023 titled as Madan Mohan Mittal v. UT Chandigarh, mentions that on 09.07.2020, in the exercise of powers conferred under Section 144 CrPC, a promulgation order was issued by the District Magistrate, Chandigarh, in which a gathering of five persons or more was prohibited. In para 4 of the reply, it has been mentioned that the petitioners, being related to a political party, had gathered in large numbers to encircle the residence of the Chief Minister of Punjab. It is stated in reply that since they had gathered outside the office of Municipal Corporation in Sector 17, Chandigarh, and prohibited orders were passed by the District Magistrate Chandigarh, as such they had violated the orders under Section 144 CrPC, and thereby committed an offence under Section 188 IPC, and as such they were arrested and FIR was registered.

12. It remains undisputed that the petitioners were not going to the residence of the Chief Minister for any personal work, but they were going for a cause of society. It also remains undisputed that in the tragedy, more than 100 persons had died in the State of Punjab.

13. When such a massive number of people died due to illicit and spurious liquor, then there has to be a lot of grief and unrest amongst people, which, if not addressed in time, could have led to massive protests and the possibility of such agitations turning violent, resulting into riots and in turn causing further loss of human life and a massive loss to the public property and private property could not have been ruled out. Being public representatives, the petitioners were peacefully going to meet the Chief Minister of Punjab to bring his attention to their grievances. The Petitioners had every right to protest democratically, and they did so in peace. Under Article 19 of the Constitution of India, in a democratic setup, every citizen has a legitimate right to raise his grievances reasonably without violating the law. The Petitioners were legally raising their grievances with the intent to meet the Hon'ble Chief Minister of Punjab. Merely bringing the Chief Minister of Punjab's attention to an important issue through a peaceful protest does not amount to an offence under section 188 IPC.

14. Counsel for UT did not place on record any material that promulgation under Section 144 CrPC dated 09.07.2020 was issued to curtail COVID-19. In this order, the only thing that was mentioned was that it was in force from 18.07.2020 for 60 days, i.e., up to 15.09.2020. It is a violation of this order, on which the petitioners are being prosecuted for violating Section 188 IPC. Section 188 IPC is disobedience to orders duly promulgated by public servants.

15. It is relevant to extract Section 188 IPC, which reads as follows:

188. Disobedience to order duly promulgated by public
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 tends 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.

Illustration

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

16. To attract the prima facie violation of Section 188 IPC, the concerned public servant or their successor must point out in the complaint that despite knowing such promulgation, the violator, without any mens rea or intention, disobeyed its directions; And either such disobedience caused or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or such disobedience caused or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray. It is sufficient that the offender knows of the order they disobey and that such disobedience produced or is likely to produce harm.

17. The State has not gathered any evidence to prima facie establish the above essential ingredients, and what disobedience the petitioner caused in this regard. Given the above, an offence under Section 188 of the IPC is not made out against any of the accused named in the FIR.

18. Another 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 195¹ CrPC clearly states that the Court cannot take Cognizance of the Police Report/Challan. The 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

¹195. 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, 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;

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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.

19. Based on the reply, it cannot be disputed that one complaint under Section 195 CrPC seeking prosecution of 17 accused was filed by Shri Mandeep Singh Brar, IAS, District Magistrate, UT Chandigarh, which bears date of 25.02.2021. In the said complaint, report under Section 173 CrPC and FIR was also attached. It can also not be disputed that complaint filed by the District Magistrate bears date of 25.02.2021 but the police had filed police report/challan which bears date of 25.05.2021 that is subsequent to the complaint filed by the District Magistrate. Order dated 02.09.2021, passed by the Chief Judicial Magistrate, reads as follows:-

“Challan presented today. It be checked and registered. Let notice to all the accused persons be issued through Senior Superintendent of Police (SSP), for 30.11.2021.”

20. Thus, it remains crystal clear that notices were not issued based on the complaint filed by the District Magistrate but on the complaint filed by the Officer Incharge of Police Station. Although the complaint was handed over by the concerned District Magistrate to Senior Superintendent of Police but the Chief Judicial Magistrate did not take cognizance based on the said complaint but he took cognizance on the basis of police report filed under Section 173 CrPC.

21. 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 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

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 Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

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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.

(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.

(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.

(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.

22. 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.

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.

[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



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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.

23. 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.

24. 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 190⁴ (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.

25. 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, being not a 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 the mandatory provision of section 195(1) of CrPC, 1973.

26. 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.150 dated 21.08.2020 are quashed and set aside. Consequently, judicial orders dated 02.09.2021 and 03.12.2021, vide which the application for discharge was dismissed, are

⁴190. 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), may take 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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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.**

