

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

CRIMINAL PETITION NO. 03 OF 2021

Dr.Salam Robindro Singh,

.....Petitioner

- versus -

1. The Officer-in-Charge, Andro Police Station,
P.O. Yairipok & P.S. Andro, Imphal East District, Manipur.
2. The Director, Tourism, Government of Manipur,
North AOC, Imphal West District-795001.

..... Respondents

For the Petitioner	::	Mr. L.Sevananda Sharma, Advocate.
For Respondent No.1	::	Mr. Athouba Khaidem, PP
For Respondent No.2	::	Mr. Lenin Hijam, Addl.AG Mr. Mangilal, Jr. to Addl.AG

Date of Order	::	04.04.2022
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BEFORE

HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR

O R D E R

[1] By way of this petition, filed under Section 482 Cr.P.C., the petitioner, a Doctor by profession, seeks quashing of FIR No.52(09)2020 APS on the file of Andro Police Station, Imphal East District, Manipur, in so far as he is concerned. This FIR was initially registered under Sections 147, 148, 188, 427 and 34 IPC but Section 505(1)(b) IPC was added thereafter.

[2] Heard Mr. L.Sevananda Sharma, learned counsel for the petitioner; Mr. Athouba Khaidem, learned Public Prosecutor, appearing for the Officer-in-Charge, Andro Police Station, respondent No.1; and Mr. Mangilal, learned counsel representing Mr. Lenin Hijam, learned Additional Advocate General, Manipur, appearing for the Director, Tourism, Government of Manipur, the complainant, respondent No.2 herein.

[3] The complainant addressed letter dated 15.09.2020 to the Superintendent of Police, Imphal East District, Manipur, stating that social media had reported to the effect that an incident occurred on 15.09.2020 at Santhei Natural Park, Andro, and some people were seen damaging the Inauguration Plaque at the park. He requested that necessary action be taken against the culprits. Thereupon, FIR No.52(09)2020 was registered on the file of Andro Police Station under Sections 147,148, 188, 427 and 34 IPC. The accused were not known and were shown in the FIR as 'Some people'.

[4] However, the Grounds for Remand filed on 17.09.2020 before the learned Judicial Magistrate First Class, Imphal East, reflected that a person had been arrested on 16.09.2020 and he disclosed that the petitioner had given a speech on 14.09.2020 at the said park. It was further stated that on 15.09.2020, a meeting was again held near the gate of the park and about 400 to 500 people attended this meeting. The damage to the Inauguration Plaque was caused thereafter. The arrested person is stated to have named some of those involved in the destruction. On the basis of this information, the police authorities sought leave to add Section 505(1)(b) IPC in the FIR and also sought remand of the petitioner to police custody to enable further investigation. However, by her order dated

17.09.2020, the learned Magistrate refused to remand the petitioner to police custody and allowed his bail application in Criminal Misc.(B) Case No.164 of 2020, thereby granting him bail subject to conditions.

[5] Mr. L.Sevananda Sharma, learned counsel, would contend that the very registration of the FIR, in so far as it pertains to an offence under Section 188 IPC, is unsustainable in law. Further, he would argue that there is no material whatsoever to implicate the petitioner in the offences alleged under Sections 188 and 505(1)(b) IPC. He would rely on the observations of the learned Magistrate in the order dated 17.09.2020 and pray for quashing of the FIR in so far as it concerns the petitioner.

[6] The Officer-In-Charge, Andro Police Station, filed an affidavit-in-opposition. Therein, he stated that there was a ban imposed by the competent authority on social gatherings and assembling of crowds due to the Covid-19 pandemic and, therefore, the petitioner ought not to have addressed a meeting at the park in violation of such order. This is the offence alleged against him under Section 188 IPC. He stated that after examining the report in that regard and upon investigation into the vandalism at the park, involving destruction of the Inauguration Plaque, one person was arrested and upon his disclosures, it came to light that the villagers were incited by the petitioner during his speech. He accordingly justified the addition of Section 505(1)(b) IPC in the FIR. He concluded by stating that investigation was still under process and that no grounds were made out to quash the FIR against the petitioner at this stage.

[7] The complainant, respondent No.2 herein, filed a counter-affidavit confirming that the Directorate of Tourism had informed the Superintendent of

Police, Imphal East District, about what had happened at the park and requested that necessary action be taken.

[8] At the outset, it may be noted that Section 188 IPC deals with disobedience to an order promulgated by a public servant. However, Section 195(1)(a)(i) Cr.P.C. postulates that no Court shall take cognizance of an offence punishable under Section 188 IPC except on the complaint in writing of the public servant concerned or of some other public servant, to whom he is administratively subordinate. An offence under Section 188 IPC is 'cognizable'. The question, however, is whether there can be registration of a FIR under Section 154 Cr.P.C. upon information of this offence without there being a complaint from the public servant or his superior. Registration of a FIR even in such circumstances would necessarily entail filing of a Police Report under Section 173(2) Cr.P.C. but the Court concerned cannot take cognizance without there being a complaint from the public servant or his superior, in the light of the embargo stipulated under Section 195(1)(a)(i) Cr.P.C.

[9] In **C.Muniappan vs. State of Tamil Nadu [(2010) 9 SCC 567]**, the Supreme Court observed that the legislative intent behind Section 195(1)(a)(i) Cr.P.C. is 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 from being wasted by endless prosecutions. It was further observed that this provision has been carved out as an exception to the general rule contained under Section 190 Cr.P.C. 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.

[10] In the light of these observations as to the purpose underlying this provision, when there is no complaint from the public servant concerned or his superior, permitting a FIR to be registered at the behest of a third party and allowing investigation to go on may ultimately turn out to be a futile exercise if no such complaint is forthcoming even at the stage of filing of the Police Report. That apart, the intended purpose of protecting the individual from persecution is lost as he would be subjected to the rigours of police investigation even though there is no complaint from the public servant concerned or his superior and the Court would ultimately have to refuse to take cognizance. A harmonious construction of these provisions would therefore require that a complaint be made by the public servant concerned or his superior for the police to register a FIR in relation to this cognizable offence and commence investigation. Therefore, the very registration of the FIR presently in relation to an offence under Section 188 IPC upon the letter of the complainant is untenable in law. Significantly, the Madras High Court, in **Jeevanandham vs. State and another [(2019) 1 Mad LJ (Cri) 36]**, and the Chhattisgarh High Court, in **Dr. Apurva Ghiya vs. State of Chhattisgarh, through Collector and others [2021 Cri LJ 890]**, opined that a FIR cannot be registered at all by the police under Section 154 Cr.P.C. However, this Court must respectfully disagree with such a broad conclusion. Such a view would render redundant the fact that an offence under Section 188 IPC is a cognizable one. The statute cannot be interpreted by the Court in such manner as to make any provision thereof otiose or ineffective.

[11] It may be noted that the only provisions of law in the FIR which can be pressed against the petitioner are Sections 188 IPC and 505(1)(b) IPC. Section 505(1)(b) deals with public mischief and states to the effect that whoever makes, publishes or circulates any statement, rumour or report with intent to cause, or which is likely to cause, fear or alarm to the public or to any section of the public, whereby any person may be induced to commit an offence against the State or against public tranquility, shall be punishable with imprisonment which may extend to three years or with fine or with both.

[12] It is significant to note that even as per the prosecution, the petitioner delivered a speech on 14.09.2020 at about 8.30 am but the vandalism at the park took place on 15.09.2020 at around 8.30 - 9.00 am, *i.e.*, a full day later. The substance of the alleged inciting speech given by the petitioner is as follows: 'If the PPP model is implemented, the amount of ₹ 10 which you used to get will be reduced to ₹ 5/- only. Do you accept it or not?.' The people gathered at the meeting are stated to have responded that they did not accept it. It is not in dispute that there was another meeting held at the park on the next day, *viz.*, 15.09.2020, and about 400 to 500 people assembled there. It is not stated as to whether any more speeches were delivered at that time and if so, what were the contents thereof. That is crucial.

[13] Apart from the fact that there is no direct link between the speech delivered by the petitioner 24 hours earlier and the vandalism that took place at the park on the next day, the substance of his speech is not shown to be incendiary by any stretch of imagination, whereby he can be accused of inciting passion leading to vandalism a day later. The mere posing of a question as to whether

people accepted the reduction from ₹ 10/- to ₹ 5/- does not amount to 'causing any fear or alarm' in terms of Section 505(1)(b) IPC. This aspect was correctly noted by the learned Judicial Magistrate First Class, Imphal East, while granting bail to the petitioner on 17.09.2020. She rightly observed that the prosecution had failed to explain as to how the speech of the petitioner had led to incitement to violence/public disorder. She further noted that there has to be a clear and immediate incitement to justify the accusation and as such, there was no *prima facie* case made out against the petitioner. Though these observations were made for the limited purpose of the bail order, it may be noted that despite the passage of more than one and a half years since the passing of this order, further investigation has not revealed anything more against the petitioner.

[14] On the above analysis, this Court finds that no material worth the name is available to implicate the petitioner in the offences alleged. FIR No.52(09)2000 on the file of Andro Police Station, Imphal East District, is accordingly quashed in so far as it pertains to the petitioner. In consequence, the bail bonds furnished by him shall stand discharged and the conditions imposed while granting him bail shall stand vacated.

CHIEF JUSTICE

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