IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-34520-2023
Reserved on:- 21.02.2024

Pronounced on:-03.04.2024

Munish Kumar Dhawan and another ...Petitioners

vs.

State of UT Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. P.S. Ahluwalia, Advocate with
Ms. Bhavi Kapur, Advocate, for the petitioners.

Mr. Manish Bansal, Public Prosecutor with
Mr. Rajiv Vij, Addl. Public Prosecutor,
for respondent-UT Chandigarh.

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HARKESH MANUJA J.

1. By way of present petition filed under Section 482 of the Code of Criminal Procedure, 1973, prayer has been made for quashing of FIR No.04, dated 07.01.2022, registered at Police Station Central Sector 17, Chandigarh for an offence punishable under Section 188 IPC along with order dated 29.03.2023 passed by the Court of Chief Judicial Magistrate, Chandigarh, convicting/passing order of sentence against the petitioners on having been pleaded guilty.

2. The petitioners were arrayed as accused in FIR No.04, dated 07.01.2022, registered at Police Station Central Sector 17, District Chandigarh, at the instance of SI Vivek Kumar regarding the alleged violation of an order dated 15.11.2021 under Section 144 Cr.P.C. passed by the concerned District Magistrate, resulting into commission of an offence under Section 188 IPC.

3. Investigation in the aforementioned FIR was concluded and challan was filed against the petitioners on 29.03.2023. On the same date, the petitioners, without being represented by the Advocate, pleaded themselves guilty and were thus convicted and sentenced to pay a fine of Rs.1000/- each and in case of default of payment of fine, to undergo simple imprisonment for 10 days.

4. By way of present petition, the aforementioned FIR besides the order dated 29.03.2023 passed by the Chief Judicial Magistrate, Chandigarh has been assailed by learned counsel for the petitioners on the following grounds:-

(i) In the present case, the FIR in question was registered on 07.01.2022, whereas, the challan was filed against the petitioners on 29.03.2023 for commission of an alleged offence under Section 188 IPC. Since, maximum punishment that can be awarded under Section 188 IPC being 6 months, therefore, in terms of Section 468 Cr.P.C., the Court concerned could not have taken cognizance on the final report submitted beyond one year;

(ii) In terms of specific bar under Section 195 Cr.P.C. read with Section 2 thereof, cognizance under Section 188 IPC could not have been taken by the Trial Court on the basis of challan as only a complaint was maintainable in this regard. In support of this submission, ld. counsel placed reliance upon the following judgments:-

a) **"Muniappan v. State of Tamil Nadu"**, reported as 2010(4) R.C.R. (Criminal) 268
b) **"Jiwan Kumar v. State of Punjab"**, reported as 2009(1)

R.C.R. (Criminal) 415

c) **"State of Punjab v. Davinder Singh Pal Bhullar"**, reported as 2012(1) RCR (Criminal) 126

(iii) Ld. Counsel also pointed out that the proceedings were carried out against the petitioners by the Trial Court on 29.03.2023 without affording opportunity to engage any lawyer which apparently was violative of Article 21 of the Constitution of India. In support, he placed reliance upon the following judgments:

a) **"Md. Sukur Ali v. State of Assam"**, reported as 2011(2) R.C.R. (Criminal) 121

b) **"Subedar v. State of Uttar Pradesh",** reported as 2020 (17) SCC 765.

He further contended that since the petitioners pleaded guilty in absence of any representation by a lawyer, such conviction on plea of guilt was liable to be set aside and for the same, he placed reliance upon the following judgments:

a) **"Khudeswar Dutta v. State of Assam"**, reported as 1998(2) R.C.R. (Criminal) 328

b) **"Pascal Mendonza v. State of M.P."**, reported as ILR 1990 MP 358

c) **"Mousham v. State"**, bearing case no CRR No 466 & 467 of 2012 (Delhi High Court).

5. On the other hand, learned counsel representing respondent-State vehemently opposed the prayer made at the instance of the petitioners while submitting that in the present case though a complaint under Section 195 Cr.P.C. was filed on behalf of the District Magistrate on 07.02.2023 which was even appended

along with the challan, however, the learned Court below instead of taking cognizance on the complaint, proceeded further and took cognizance on the basis of challan filed by the investigating agency and as such it was merely an irregularity on the part of the trial court for which the petitioners were not to be benefitted.

5.1 Learned counsel for respondent-State while referring to judgment passed by the Hon'ble Supreme Court in case of ***"Kisan Trimbak Kothula and others vs. State of Maharashtra" 1977 (1) SCC 300***, submitted that once the petitioners admitted themselves guilty, they were not to be permitted to go back and reagitate the issue on merits.

6. I have heard learned counsel for the parties and gone through the paper-book/relevant record and I find substance in submissions made by the ld. Counsel for the petitioners.

7. Let us first examine the contention by learned State Counsel that in view of **Kisan Trimbak Kothula**'s case (supra), once the petitioners themselves pleaded guilty, now they cannot turn back and agitate against the conviction. Relevant paragraph from this judgment is reproduced hereunder:

> *"5. Wide-ranging defences were valiantly urged by the appellants before us but without merit. For, once a person pleads guilty and the Court accepts it, there is no room for romantic defences and irrelevant litanies based on the business being the mainstary of a large family, both brothers, the only bread-winners, being jailed, bazaar coming milk brought by the servant unwittingly turning out to be buffaloes' milk and what not.* ***How can a factual contention of innocence survive a suicidal plea of guilty or tell-tale contrition wash away the provision for minimum sentence? Therefore, what is permissible is the sole legal***

> ***submission that the offence falls under the proviso (i) to Section 16(1) which, if good, relieves this Court from imposing the compulsory minimum sentence of six months' imprisonment if sound grounds therefore exist.*** *The desperate appellants, undaunted by one of them having been stained by a prior conviction for a food offence, half-heartedly flirted with the misericordious submission that the Probation of Offenders Act be applied to these economic offenders. The futile plea has to be frowned off, being more a gamble in fool-hardy courage than one showing fidelity to precedents or fairness to forensic properties. We state it to reject it so that like delinquents may not repeat it later in similar circumstances. True, petty milk vendors and poor victuallers, young apprentices in adulteration offences, trivial criminals technically guilty and others or their ilk, especially when rehabilitation is feasible or repetition is impossible and the social circumstances promise favourable correctional results, may call the compassionate attention of the Court to the provisions of the probation law unless Parliament pre-empts its application by express exclusion (The law in this regard has since been tightened up). Equally true, that a few guileless soul in the dock, scared by the sometimes exaggerated legal finality given to public analysts' certificates and the inevitable incarceration awaiting them, may enter into that dubious love affair with the prosecution called 'plea bargaining' and get convicted out of their own mouth, with a light sentence to being with, running the risk of severe enhancement if the High Court's revisional vigilance falls on this 'trading out' adventure. This Court has animadverted on this vice of 'plea bargaining' in Murlidhar, case. May be, something like that happened here, as was urged before us by Shri Gobind Das for the appellants, relying, as he did, on the circumstances that the accused had cross examined the prosecution witness as if he were innocent, added a rider to his plea of guilt and sown the seeds of a valid defense even as he was asking for mercy in punishment. We do not explore the deeper import of the quasi-compounding element or something akin to it, except to condemn such shady deals which cast suspicion on the integrity of food inspectors and the administration of justice."*
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> ***Note: emphasis supplied***

A perusal of the same makes it sufficiently apparent that though factual contentions cannot be agitated by the accused person but at the same time, there is no restriction on challenge being made

on legal premises. As arguments have been restricted in the case in hand only on legal premises and no factual basis has been touched upon, this judgment would not be applicable in the facts and circumstances of the present case.

8. In that eventuality, contention by learned Counsel appearing for the petitioners regarding non compliance of section 195 CrPC gains significance. In case of an offence registered under Section 188 IPC, procedure as mandated under Section 195 CrPC is required to be followed. As per Section 195 CrPC, no Court can take cognizance of an offence registered 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. It is a settled proposition that neither police can register FIR in such cases nor magistrate can take cognizance on the basis of a chargesheet/ challan.

9. Similar was also the observation of a Division Bench of this Court in **Jiwan Kumar**'s case (supra). Relevant para from this judgment is reproduced here under:

> *"8. Coming to the attack of the petitioner in regard to the registration of the F.I.R., it may be noticed that proceedings under Section 188 Indian Penal Code can only be initiated on the basis of a complaint in writing of the public servant concerned made to the Court or to some other public servant to whom he is administratively subordinate. Section 195(1) of the Code restrains the Court from taking cognizance of any offence punishable under Section 188 Indian Penal Code unless a complaint in writing is made to it by the public servant concerned. In other words, no FIR can be registered by the police. It would not be open to the police to register a case against the offender for offence under Section 188 Indian Penal Code and then to submit a report under Section 173 of the Code to the concerned Court. Reliance in this regard can be placed on*

> ***Jagtar Singh v. Union Territory****, Chandigarh, 1996 (1) RCR 669, wherein this Court held as under :*
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> > *"These facts are not disputed. Language of Section 195(1) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence the provisions of Criminal Procedure Code or Penal Laws have to be strictly construed so as to be given meaning except what is intended by the Legislature in the language used itself. The relevant portion of Section is that, "No Court shall take cognizance except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate." The intention appears to be clear that where an offence is committed under Section 188 Indian Penal Code, the Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned Court is dependent upon the complaint in writing by such officer or an officer superior to such officer.*
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> > *The counsel for the petitioner has relied upon **Sawaran Singh v. The State of Punjab**, 1994(3) Recent CR 352 and **Bhagat Ram v. The State of Punjab**, 1991(1) Recent CR 192. In both these cases the Court has indicated that the scope of Section 195(1) of the Code does not contemplate investigation in a normal way by the police and filing of the challan, but the complaint has to be presented directly to the concerned Court. In the present case though the complaint is stated to be addressed to the Court, but as it appears it was not presented to the Court and the Court did not pass any orders at that stage."*

10. At the same time from the ratio of **Davinder Singh Pal Bhullar**'s case (supra), a logical conclusion can also be arrived that in such scenario, if criminal proceedings are initiated on the basis of a challan then such proceedings would be vitiated and bound to be quashed.

11. From the records, it is manifest that proceedings were carried out in violation of section 195 CRPC in the present case. Initially an FIR No 004 dated 07.01.2022 was registered against few

persons including the petitioners on account of non compliance of order dated 15.11.2021 passed by the DC on the basis of an inspection carried out by police officials. As per the legal mandate of Section 195 CrPC, magistrate could take cognizance only on the basis of a complaint from the concerned official and FIR in this case was not maintainable. Though, it has been contended by the learned State counsel that a complaint dated 07.02.2023 was also filed in the competent court, but perusal of impugned order dated 29.03.2023 clearly shows that learned magistrate took cognizance only on the basis of charge sheet and on the basis of any such complaint dated 07.02.2023.

12. Further, a careful perusal of the record clearly establishes that complaint dated 07.02.2023 was merely an afterthought by the investigating agency and was made part of the proceedings at the fag end only to bypass the technicalities, probably when it came to the knowledge that cognizance in the absence of complaint in such cases, cannot be taken by the court. This observation is necessitated from the facts that while the FIR is dated 07.01.2022, complaint is dated 07.02.2023, i.e. after more than a year.

13. Furthermore, since in the present case maximum punishment imposable is six months and section 468 of the CrPC bars the concerned Court from taking cognizance after the lapse of the period of limitation which as per 468(2)(b) is one year, even the complaint in the present case was beyond the period of limitation. Though no doubt extension of period of limitation in certain cases can

be allowed, the absence of any such application augmented with the fact that even the complaint was beyond the period of limitation, makes the case of the respondent state completely deleterious.

14. Additionally, perusal of FIR clearly shows that it was registered on the basis of the ruqa sent after inspection carried out by police officials and accordingly, in pursuance of the same, chargesheet was filed. Even the impugned order shows that it was passed in case bearing case number PCH 508/2023 wherein PCH means case on the basis of police challan. In the above discussed factual matrix, there remains no doubt that the proceedings in the present case were on the basis of an FIR and beyond the period of limitation, which is not permissible and thereby the FIR as well as the order of conviction dated 29.03.203 both are liable to be quashed.

15. There is another dimension as well to the present case. As rightly argued by the learned counsel for the petitioners, they were not represented by any advocate when the order of conviction was passed against when they pleaded guilty. Being convicted of an offense can have far-reaching consequences beyond mere penal outcomes, often unforeseen by the average individual. In this particular instance, it seems the petitioners opted to plead guilty, perhaps hastily, as they were only faced with a fine of Rs. 1000, without fully comprehending the potential ramifications of their actions. If they had been guided by legal counsel, they might have been better informed about the dormant and latent outcomes and repercussions of such a conviction.

16. Under similar circumstances, Delhi High Court in **Mousham**'s case (supra), which has also been relied upon by the learned Counsel for the petitioners, observed that conviction of any accused without representation by a lawyer amounts to violation of his fundamental right under Article 21 and his trial has to be held to be vitiated on account of a fatal constitutional infirmity. Relevant para from this judgment is reproduced here under:

> *"7. It is clear from both these identical orders of the learned Special Magistrate that both the petitioners have been convicted without even providing them any legal aid which they were entitled to get at State expense. They were not even given any opportunity to avail of the benefit of bail given to them and straightaway their detention in a certified institution for a period of one year was also ordered. In the two judgments of the Hon'ble Supreme Court referred to already, one of which was cited by the learned counsel for the petitioners and the other one was cited, very fairly, by the learned Additional Public Prosecutor it was held that right of an accused in a criminal case, where upon conviction he can be ordered to be imprisoned, to be represented by a lawyer at State cost when the accused cannot afford that facility is a fundamental right guaranteed under Article 21 of the Constitution of India and further that it is the Court's duty to inform the unrepresented accused that he could get legal aid at State cost even if the accused does not request for legal aid and the conviction of any accused without representation by a lawyer amounts to violation of his fundamental right under Article 21 and his trial has to be held to be vitiated on account of a fatal constitutional infirmity. This serious infirmity in the trial of the petitioners has been ignored even by the appellate court also."*

17. The order dated 29.03.2013 clearly indicates that in the present case, the chargesheet was filed on the same day, followed promptly by the framing of charges. While it is noted in the order that the petitioners were briefed about the charges against them, the absence of legal representation proved detrimental. This absence

denied the petitioners the crucial opportunity to consult with an advocate, thus depriving them of the ability to make informed decisions and act accordingly. In cases where an accused pleads guilty but is not represented by an advocate, there is a risk that their plea may not be fully informed or voluntary which would violate the principles of fair trial as enshrined in Article 21. The presence of legal representation ensures that the accused understands the charges against them, the consequences of pleading guilty, and can make informed decisions regarding their defense. Therefore, on this account as well, these proceedings are liable to be quashed.

18. Resultantly, in view of the discussion held above, petition is allowed and accordingly FIR No.04, dated 07.01.2022, registered at Police Station Central Sector 17, District Chandgarh as well as order dated 29.03.2023 passed by the Court of Chief Judicial Magistrate, Chandigarh are hereby quashed.

19. Pending application(s), if any, shall also stand disposed of.

April 03, 2024 **(HARKESH MANUJA)**
sonika **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No