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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

CRIMINAL REVISION No. 1208 of 2016

BETWEEN:-

**RAGHUVIR SINGH S/O JASWANT SINGH, AGED ABOUT
51 YEARS, OCCUPATION: SERVICE VILLAGE
MADHOPUR (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI OMPRAKASH SOLANKI, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THRU.P.S.JHABUA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI GOURAV RAWAT, GA FOR STATE)

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***Heard on : 07.03.2024
Delivered on :13.04.2024***
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This revision was heard and the court pronounced the following:

ORDER

1. The petitioner has preferred the present petition under Section 397 r/w section 401 of Cr.P.C. being aggrieved by the judgment dated 29.08.2016 passed in CRA No.171/2015 by Sessions Judge, Jhabua whereby the judgment dated 17.10.2015 passed by JFMC, Jhabau in Criminal Case No.1047/2012 has been affirmed by dismissing the appeal and the petitioner has been convicted under section 186 of IPC and sentenced for imprisonment till rising of the Court with fine of Rs.500/-. Hence, the present criminal revision before this Court.

2. The prosecution story in brief is that, on the date of incident, at about 11:00AM, Manoj Kumar Sahu, Superintendent of Jail was indulged in the

official work alongwith the staff, at that time, Gatekeeper namely Kanalal asked that Raghuveer Singh Prehari want to come to the office, then he was permitted by Superintendent of Jail, he asked about his transfer to Javad Jail, he abused the Jail Superintendent and tried to interfere with the official work, thereafter, the complainant R.P. Vasuniya on the basis of a complaint written by Superintendent of Jail, lodged the FIR regarding abusing the officers and for intervening in the official work. Hence, the police has registered the FIR against the appellant under Section 353 of IPC. Thereafter, the police has taken the statements of the witnesses and filed the charge sheet. JMFC, Jhaba has framed the charges against the appellant under Section 353 of IPC and after appreciating the evidence available on record, acquitted the appellant from the charges under Section 353 of IPC and convicted him under Section 186 of IPC and sentenced for TRC (till rising of the Court) with fine of Rs.500/- with default stipulation.

3. Being aggrieved, the appellant has preferred an appeal before the learned Sessions Judge and by the judgment dated 29.08.2016 passed in CRA No.171/2015 by Sessions Judge, Jhabua has dismissed the appeal. Hence, the present revision before this Court.

4. Learned counsel for the appellant submits that the learned trial Court as well as learned appellate Court have committed grave error of law in convicting the appellant solely on the basis of statements of the complainant and his related witnesses. There are material contradictions and omissions in the statements of the witnesses. The appellant is a Government Servant and no compliance of the provisions of Section 157 of Cr.P.C. has been made in the present case. Counsel for the petitioner further submits that while convicting the petitioner under Section 186 of IPC, the learned trial Court as well as learned appellate

Court have not appreciated the provisions of Section 195(1)(a)(1) as well as the provisions of Section 222(4) of Cr.P.C. To constitute the offence under Sections 186 of Cr.P.C., the act of the accused should be covered under the provisions of Section 195(1)(a)(1) as well as the provisions of Section 222(4) of Cr.P.C. In the case in hand, the learned Courts below have convicted the appellant even after non application of the aforesaid provisions of Section 195(1)(a)(1) as well as the provisions of Section 222(4) of Cr.P.C. It is also submitted that being the Govt. Employee, the career of the petitioner is being affected and is facing the crises even after committing no offence. Hence prays for setting aside the impugned orders and for acquittal of the petitioner.

5. In support of his arguments, learned counsel for the petitioner placed reliance over the judgment of Hon'ble Apex Court passed in the case of **Saloni Arora vs. State (NCT of Delhi) [2017(2) MPLJ (CRI.) (SC) 480]** & **C. Muniappan vs. State of Tamil Nadu [AIR 2010 SC 3718]**. He also placed reliance on the judgement of this Court passed in the case of **Prashan Chauhan vs. State of M.P. [2014(1) MPLJ (CRI.) 628]**, **Swastik Construction Co. vs. State of M.P. and Others [2020 (2) MPLJ (Cri.) 504]**.

6. On the other hand, counsel for the State has opposed the prayer by submitting that the the petitioner has committed the offence and the learned both the Courts below have well considered the evidence available on record and convicted him. It is also submitted that the act of the petitioner is not acceptable and the conviction has rightly been upheld by appellate Court also. Hence, prays for dismissal of the petition.

7. I have heard the counsel for the parties and perused the record and

impugned orders.

8. At the very outset, for fair conclusion of this petition, this Court has to go through the appropriate provisions of law. The provisions under Section 195(1)(a)(1) as well as the provisions of Section 222(4) of Cr.P.C. are 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 -

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b).....

(c).....

222. When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

(a).....

(b)....."

9. In view of the aforesaid provisions, no criminal court can pass the judgment of conviction under Section 172 to 188 (both inclusive) of IPC without a written complaint of the respective public servant or other public servant to whom he is administrative subordinate. As such it is clear violation of the provisions of Section 195(1)(a)(i) of Cr.P.C.

10. On this aspect, reliance can also be profitably placed on the judgment of this Court passed in the case of **Ramavtar vs. state of Madhya Pradesh [2019 (1) MPWN 50** wherein the High Court relying upon the another judgment rendered by Apex Court in the case of **C. Muniappan (supra)** viewed that the trial court erred in taking cognizance and in framing the charges under Section 188 of IPC which can have only be routed through private complainant and not through charge sheet of police.

11. In this respect, the law laid down by this Court in the case of

Prashan Chauhan (supra) is also worth to quote here:-

"12. So far as the commission of offence u/s 188 of IPC is concerned, the provisions contained in clause (a) are applicable which mandate that no Court shall take cognizance of the offence punishable u/s 188 of IPC, except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate. thus, the Court is prohibited from taking cognizance of the offence punishable under Section 188 of IPC except when the complaint in writing is made by the concerned public servant....".

12. Similarly, in the case of **Saloni Arora (supra)**, Hon'ble Apex Court following another judgment of Apex Court, viewed as under:

"10. As rightly pointed out by the learned counsel for the parties on the strength of law laid down by this Court in the case of **Daulat Ram vs. state of Punjab, AIR 1962 SC 1206** that in order to prosecute an accused for an offence punishable under Section 182, Indian Penal Code, it is mandatory to follow the procedure prescribed under Section 195 of the Code else such action is rendered void *ab initio*."

13 Certainly, in this case the charge sheet was filed under Section 353 of IPC, but the learned trial Court has convicted the petitioner under Section 186 of IPC. However, such conviction in minor offence is also vitiated because it has been passed in violation of Section 222(4) of Cr.P.C. Hence, it cannot be permitted.

14. Now, the question remains that under these condition what should be correct methodology for deciding such cases? In this regard, the law settled in

the case of **Ramavtar (supra)** are important to refer here:

"8. Considering the said guidelines and dictum of the Apex Court, it appears that the appropriate remedy would have been for the respondents to prefer private complaint and not through the charge sheet. Trial Court further erred in taking cognizance and framing charge under Section 188 of the IPC which could have only be routed through private complaint and not through charge-sheet.

9 . Resultantly, proceedings pending before the Judicial Magistrate First Class, Bhand and FIR are hereby quashed. Respondents shall be at liberty to take other recourse of private complaint in accordance with law, if law permits. Respondents would satisfy the trial Court regarding limitation by moving appropriate application as per law."

15. In the light of the aforesaid analysis and settled legal position of law, it would be proper to set aside both the impugned orders passed by learned appellate Court and Judicial Magistrate with a direction that the respondent/complainant shall be at liberty to take recourse of private complaint in accordance with law. So far as the provision of limitation is concerned, the provision of section 473 of Cr.P.C. may be applied as per judicial discretion by the concerned competent Court.

16. In view of the foregoing discussion in its entirety, the judgement dated 29.08.2016 passed in CRA No.171/2015 by Sessions Judge, Jhabua & the judgment dated 17.10.2015 passed by JFMC, Jhabau in Criminal Case No.1047/2012 regarding conviction of the petitioner under Section 186 of Cr.P.C are set aside.

17. The respondent/complainant shall be at liberty to take recourse of private complaint within the purview of law.

18. With the aforesaid observations, the petition stands allowed and disposed off.

19. A copy of this order be sent to the Courts below concerned for information and compliance.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

amit

