

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	Case No.	MCRC Nos.32779/20, 22907/20, 31816/20, 31827/20, 31933/20, 36823/20, 37695/20, 39757/20, 29043/20 & 39474/20.
2	Parties Name	Zaid Pathan and others Vs. State of M.P.
3	Date of Judgment	22/12/2020
4	Bench constituted of	Hon'ble Shri Justice Prakash Shrivastava
5	Judgment delivered by	Hon'ble Shri Justice Prakash Shrivastava
6	Whether approved for reporting	Yes
7	Name of counsels for parties.	<p>Shri Pratyush Mishra, learned counsel for the petitioners in MCRC No.32779/20.</p> <p>Shri Anshuman Shrivastava, learned counsel for the petitioners in MCRC Nos.22907/20, 31816/20, 31827/20 & 31933/20.</p> <p>Shri S.A. Warsi, learned counsel for the petitioners in MCRC Nos.36823/20, 37695/20 & 39757/20.</p> <p>Shri Neeraj Kumar Soni, learned counsel for the petitioner in MCRC No.29043/20.</p> <p>Shri Manish Yadav, learned counsel for the petitioner in MCRC No.39474/20.</p> <p>Shri Pushyamitra Bhargava, learned Addl. A.G. with Shri Aniruddha Gokhale, learned counsel for the respondent/State.</p>
8	Law laid down	Section 195(1) Cr.P.C. is attracted at the stage of taking cognizance. There is no bar under Section 195 of the Cr.P.C. in respect of registration of FIR, therefore, FIR for an offence under Section 188 of the IPC can be registered by the police and after investigation on the basis of the FIR and the material collected during the course of investigation, a competent public servant can file the complaint before the concerned court. What is barred under Section 195 of the Cr.P.C. is that after investigating the offence under Section 188 of the IPC, the police officer cannot file a final report in the Court and the Court cannot take cognizance on that final report, as at that stage the bar contained in Section 195 of the Cr.P.C. comes into operation.
9	Significant paragraph numbers	8 to 23

(Prakash Shrivastava)
Judge

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

MCRC No.32779/2020

Zaid Pathan and others Vs. State of M.P.

MCRC No.22907/2020

Mukesh Yadav Vs. State of M.P.

MCRC No.29043/2020

Dinesh Dubey Vs. State of M.P.

MCRC No.31816/2020

Vinay and others Vs. State of M.P.

MCRC No.31827/2020

Vinay Bakliwal Vs. State of M.P.

MCRC No.31933/2020

Vinay Bakliwa Vs. State of M.P.

MCRC No.36823/2020

Divik Mukati Vs. State of M.P.

MCRC No.37695/2020

Mohd. Maqsd Chauhan Vs. State of M.P.

MCRC No.39474/2020

Salman Vs. State of M.P.

MCRC No.39757/2020

Mohd. Anees Khan Vs. State of M.P.

Shri Pratyush Mishra, learned counsel for the petitioners in MCRC No.32779/20.

Shri Anshuman Shrivastava, learned counsel for the petitioners in MCRC Nos.22907/20, 31816/20, 31827/20 & 31933/20.

Shri S.A. Warsi, learned counsel for the petitioners in MCRC Nos.36823/20, 37695/20 & 39757/20.

Shri Neeraj Kumar Soni, learned counsel for the petitioner in MCRC No.29043/20.

Shri Manish Yadav, learned counsel for the petitioner in MCRC No.39474/20.

Shri Pushyamitra Bhargava, learned Addl. A.G. with Shri Aniruddha Gokhale, learned counsel for the respondent/State.

Whether approved for reporting : YES

ORDER

(Passed on 22/12/2020)

1/ This order will govern the disposal of MCRC Nos.32779/20, 22907/20, 31816/20, 31827/20, 31933/20, 36823/20, 37695/20, 39757/20, 29043/20 & 39474/20 as it is jointly submitted by counsel for the parties that all these MCRCs involve the same issue on the identical fact situation.

2/ These MCRCs have been filed for quashing the FIR registered by the police for offence under Section 188 of the IPC.

3/ For convenience the facts are noted from MCRC No.32779/20.

4/ This MCRC has been filed under Section 482 of the Cr.P.C. for quashing the FIR No.5/2020 registered at Police Station Sarafa, Indore. FIR has been registered against the petitioners for commission of offence under Section 188 & 34 of the IPC with the allegation that on 15.1.2020 the petitioners had staged a demonstration against CAA and NRC without giving any intimation or taking prior permission from the competent authority, whereas the District Magistrate in order to maintain peace and tranquillity had issued the order No./2322/R.A.D.M./2019, and Order No./2323/R.A.D.M./2019 dated 10.12.2019 prohibiting any demonstration, procession, public meeting etc. in any place without permission. It is further alleged that in addition to the petitioners, there were other 200 persons who had violated the order of the District Magistrate and, therefore, committed the offence under Section 188 of the IPC.

5/ The submission of learned counsel for the petitioners is that in terms of Section 195(1)(a)(i) there is a bar for taking cognizance of offence under Section 188 of the IPC and for that purpose a complaint under Section 200 of the Cr.P.C. is required to be filed and FIR cannot be registered. They further submit that for registering the FIR obstruction, annoyance, injury or threat to life and safety is necessary and that the order of the District Magistrate was not communicated to the petitioners. They further submit that right of demonstration is a fundamental right. In support of their submission they have relied upon the judgment of the Bombay High Court **dated 23.2.2017 in Criminal Application No.6265/2016 (Shrinath Gangadhar Giram Vs. State of Maharashtra and Another)**, judgment of Madras High Court **dated 20.9.2018 in Criminal OP No.1356/2018 and connected petitions in the case of Jeevanandham and others Vs. State and Another**, as also the judgment of the Madras High Court in **Criminal OP No.9487/2020 dated 26.6.2020 in the case of Shamsul Huda Bakavi Vs. State** reported in 2020 SCC Online Mad 1298, judgment of the Supreme Court in the matter of **Anita Thakur and others Vs. Government of Jammu and Kashmir and others reported in (2016) 15 SCC 525**, the judgment of coordinate Bench of this Court **dated 2.11.2020 passed in M.Cr.C. No.44006/2019 in the case of Gopal Bhargava Vs. State of M.P.** and the judgment of this Court in the case of **State of M.P. and Another Vs. Jyotiraditya Scindia dated 7/2/2014 passed in W.A. No.888/2013** and the judgment of the Supreme Court in the matter of **C. Muniappan and others Vs. State of Tamil Nadu reported in (2010) 9 SCC 567.**

6/ Learned counsel for the State has opposed the petition and has submitted that there is no bar under Section 195 of the Cr.P.C. in registering the FIR for offence under Section 188 of the IPC and the bar under Section 195 comes into operation at the stage of taking cognizance. He has further submitted that the offence under Section 188 of the IPC is a cognizable offence and in the State of M.P. it is non bailable offence, therefore, the police officer is competent to register the FIR. In support of his submission he has placed reliance upon the judgment of the Supreme Court in the matter of **State of Punjab Vs Raj Singh and Another reported in 1998 (2) SCC 391**, in the matter of **M. Narayandas Vs. State of Karnataka and others reported in 2003(11) SCC 251** and in the matter of **Vishal Agrawal and Another Vs Chhattisgarh State Electricity Board and another reported in (2014) 3 SCC 696**.

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

8/ The offence registered against the petitioners is under Section 188 of the IPC, which reads as under:-

“Section 188. Disobedience to order duly promulgated by public servant.--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 persons 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.”

9/ The necessary ingredients of Section 188 of the IPC is that there should be a prohibitory order promulgated by a competent public servant, which should be known to the person concerned and there should be disobedience which should cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person, or such disobedience should cause or tend to cause danger to human life, health and safety, riot or affray. The explanation to this Section makes it clear that for making out the offence it is sufficient that there was knowledge of the order and its disobedience and that the disobedience produces or likely to produce harm.

10/ Under the Cr.P.C. the offence under Section 188 of the IPC is cognizable and bailable. By virtue of the local amendment made by the State of M.P. vide Notification No.33207-F-No.6-59-74-B-XXI dated 19.11.1975 the said offence is made non bailable.

11/ Section 154 of the Cr.P.C. provides for registration of FIR by the police in case of cognizable offence and reads as under:-

“S.154. Information in cognizable cases.-(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant; and every such information, whether given

in writing or reduced to writing as aforesaid, shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.”

12/ Therefore, in terms of the aforesaid, the police officer is competent to register the FIR in case of commission of offence under Section 188 of the IPC.

13/ In the present case it is not in dispute that there were prohibitory orders of the District Magistrate No./2322/R.A.D.M./2019 and No./2323/R.A.D.M./2019 dated 10.12.2019 completely prohibiting any kind of procession, rally, public meeting, demonstration without permission within the limits of Indore. These prohibitory orders were issued by the District Magistrate under Section 144 of the Cr.P.C.

14/ The main argument which is advanced is that in view of the bar contained under Section 195 of the Cr.P.C., the police could not have registered the FIR for offence under Section 188 of the IPC. Section 195(1) of the Cr.P.C. which is relevant for the present purposes reads as under:-

“S.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 of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is

alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, of the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[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.]”

15/ The submission of counsel for the petitioners is that as per the procedure prescribed in Section 195 of the Cr.P.C., for the purpose of the offence under Section 188 of the IPC a public servant is required to file a complaint before the competent court and, therefore, the FIR cannot be registered.

16/ Such an argument advanced by counsel for the petitioners is devoid of any merit. A bare reading of Section 195(1) Cr.P.C. reveals that the provisions contained in the sub-section are attracted at the stage of taking cognizance. There is no bar under Section 195 of the Cr.P.C. in respect of registration of FIR, therefore, FIR for an offence under Section 188 of the IPC can be registered by the police and after investigation on the basis of the FIR and the material collected during the course of investigation, a competent public servant can file the complaint before the concerned court. What is barred under Section 195 of the Cr.P.C. is that after investigating the offence under Section 188 of the IPC, the police officer cannot file a final report in the Court and the Court cannot take cognizance on that final report, as at that stage the bar contained in Section 195 of the Cr.P.C. comes into operation.

17/ The Supreme Court in the matter of **Raj Singh (supra)** wherein the similar issue had arisen, has held that the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. In that judgment Hon'ble Supreme Court has held as under:-

“2. We are unable to sustain the impugned order of the High Court quashing the F.I.R. lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii)Cr.P.C. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 Cr.P.C. it is manifest that it comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr.P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R. which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in Court. In other words, the statutory power of the Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge-sheet (challan), if any, filed on completion of the investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) Cr.P.C., but nothing therein deters the Court from filing a complaint for the offence on the basis of the F.I.R. (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in section 340 Cr.P.C. The judgment of this Court in Gopalakrishna Menon Vs. D. Raja Reddy [AIR 1983 SC 1053] on which the High Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the Court could not take cognizance on such a complaint in view of Section 195 Cr.P.C.”

18/ The law laid down in the case of **Raj Singh (supra)** has subsequently been approved by the Supreme Court in the matter of **M. Narayandas (supra)**. The Hon'ble Supreme Court after taking note of the judgment in the matter of **Raj Singh (supra)** has held as under:-

“8. Not only are we bound by this judgment but we are also in complete agreement with the same. Sections 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 of the Criminal Procedure Code is followed. Thus no right of the Respondents, much less the right to file an appeal under Section 341, is affected.”

19/ In the matter of **Vishal Agrawal (supra)** similar issue came up in reference to the provisions of Section 151 of the Electricity Act, 2003 which also restricts any Court from taking cognizance of an offence punishable under the Electricity Act, except upon an application in writing made by the competent person. The Hon'ble Supreme Court has held that:-

“23. Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when a complaint is filed before it, that would not mean that no other avenue is open and the complaint/FIR cannot be lodged with the police. It is stated at the cost of repetition that the offences under the Electricity Act are also to be tried by applying the procedure contained in the Code. Thus, it cannot be said that a complete machinery is provided under the Electricity Act as to how such offences are to be dealt with. In view thereof, we are of the opinion that the respondent's counsel is right in his submission that if the offence under the

Code is cognizable, provisions of Chapter XII containing Section 154 Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Sections 135 and 138 only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure.”

20/ The above judicial pronouncements make it clear that by virtue of the provisions contained in Section 195(1)(a) of the Cr.P.C. the power of the police to register the FIR for offences mentioned therein is not curtailed but what is curtailed is the jurisdiction of the Court to take cognizance of these offences without there being complaint in writing of the concerned public servant.

21/ The aforesaid judicial pronouncements of Hon'ble Supreme Court are binding on this Court under Article 141 of the Constitution, therefore, the contrary view which has been taken by the Bombay High Court in the case of **Shrinath Gangadhar Giram (supra)** and of Madras High Court in the case of **Jeevanandham (supra)** & **Shamsul Huda Bakavi (supra)** and of this Court in the case of **Gopal Bhargava (supra)** and **Jyotiraditya Scindia (supra)** is of no help to petitioners. The Bombay High Court, Madras High Court and coordinate Bench of this Court while taking the contrary view have failed to take note of the law which has been laid down by the Hon'ble Supreme Court in the judgments noted above.

22/ Counsel for the petitioners have also placed reliance upon the judgment in the case of **Anita Thakur** (supra), which relates to the issue of freedom of speech but in that judgment itself it has been clarified that the right is subject to the reasonable restriction. Counsel for the petitioners have also placed reliance upon the judgment of the Supreme Court in the matter of **C. Muniappan (Supra)** but that case only lays down that the provisions of Section 195 of the Code is mandatory in nature and that Section 195(1)(a)(i) of the Code bars the Court from taking cognizance of any offence punishable under Section 188 of the IPC, unless there is a written complaint by the public servant concerned but it does not lay down that for such an offence there is a bar for registering the FIR. In that case the trial Court had framed the charge under Section 188 of the IPC without there being a complaint, therefore, the same was quashed.

23/ Having regard to the aforesaid, I am of the opinion that no case is made out for quashing the FIR registered against the petitioners for offence under Section 188 of the IPC on the ground that the police does not have power to register the FIR for that offence. The petitioners will have liberty to raise the issue of violation of the provisions of Section 195(1)(a) of the Cr.P.C. in case if after the investigation instead of filing the complaint a final report is filed and the Court concerned takes the cognizance without filing the complaint.

24/ Counsel for the petitioners have also raised the ground that on the basis of the FIR allegation the offence is not made out. For offence under Section 188 IPC it is sufficient that the violator of the prohibitory order not only

knows the order which he disobeys and that his disobedience produces or is likely to produce harm. Whether the petitioners were aware of the prohibitory order or their disobedience had produced or likely to produce harm, is subject matter of investigation. It has been pointed out that the investigation is under progress. The concerned public servant is expected to file the complaint against the petitioners only if relevant material making out an offence under Section 188 IPC is collected during the course of investigation. The Supreme Court in the matter of **M. Narayandas (supra)** has reiterated the settled position in law that power to quash the FIR must be exercised very sparingly and with circumspection and that too in the rarest of rare case and that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR and the Court cannot inquire whether the allegations in the complaint are likely to be established or not.

25/ Having regard to the aforesaid, I do not find any merit in these petitions. No case for exercising the inherent power under Section 482 of the Cr.P.C. is made out. The petitions are accordingly dismissed.

26/ Signed order be kept in the file of MCRC No.32779/20 and a copy thereof be kept in the file of connected MCRC Nos. 22907/20, 31816/20, 31827/20, 31933/20, 36823/20, 37695/20, 39757/20, 29043/20 & 39474/20.

(Prakash Shrivastava)
Judge