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

**BEFORE
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)**

ON THE 16th OF NOVEMBER, 2022

MISC. CRIMINAL CASE No. 54086 of 2022

BETWEEN:-

**BABULAL MANSURYA ALIAS K.K. ANAND S/O SHRI
MANGILAL MANSURYA, AGED ABOUT 42 YEARS,
OCCUPATION: TEACHER VILLAG HAATPIPLYA, DEWAS
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SUSHRUT JOSHI, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION BHAWARKUAN,
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

***(SHRI HEMANT SHARMA G.A. APPEARING ON BEHALF OF ADVOCATE
GENERAL.***

सत्यमेव जयते

Petitioner has filed this miscellaneous criminal case under Section 482 of Cr.P.C. being aggrieved by the FIR No.395/2020 dated 02.07.2020 registered at Police Station Bhawarkua, Indore under Section 188 of IPC alongwith the subsequent charge sheet dated 31.12.2020 filed against the petitioner.

2. Prosecution case in brief is that the complainant namely one Deepak Kardam has filed a complaint before the police station Bhanwarkua, Indore by submitting that the petitioner is having a youtube channel namely trolly speak and has uploaded a video

on his channel in which he has alleged speaking about the adversarial conditions pertaining to Covid -19 Pandemic in the area of Bhawarkua, Indore and due to which, the petitioner spread fear among general public and hence, violated the order no.357-58/PA/200 dated 06.04.20220 issued by District Magistrate. On the basis of the said complaint, the police has registered the case under Section 188 of IPC and now, charge-sheet has already been filed.

3. The petitioner challenges filing of the charge-sheet on the ground that offence under Section 188 of IPC is not cognizable one and only a complaint under Section 195 of Cr.P.C. can be filed by a government authorized officer and it is not open for all or to public to file a complaint to anyone under Section 188 of IPC. Therefore, the proceedings are not maintainable and liable to be quashed.
4. Learned counsel for the petitioner/accused submits that the FIR and the Charge-sheet are totally illegal and liable to be quashed. Learned counsel for the petitioner further submitted that the law is well settled that when the law prescribed anything to be done in a particular manner than it has to be done in that manner only.

Therefore, the respondent has not only ignored the legal provisions and registered the FIR against the petitioner without verifying the veracity of the conduct of petitioner and without evening investigating into the matter. Hence, prays for quashment of the same.

5. Learned Panel Lawyer appearing for the State has vehemently opposed the submissions made by learned counsel for the petitioner/accused and submits that there is no perversity or illegality in the impugned orders and, therefore, this petition under Section 482 of Cr.P.C. is liable to be dismissed
6. Heard both the parties and perused the record.
7. Before proceeding further, it would be appropriate to mention Section 188 of IPC which read as under:-

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 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 trends 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*

8. Further before proceeding further, it would be appropriate to mention Section 195 of Cr.P.C which read as under:-

Section 195. Prosecution for contempt of lawful authority of public servants, for offence against public justice and for offence relating to document 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, or 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.

- 2. *Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:*

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

- 3. *In clause (b) of sub-section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.*
- 4. *For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-*
 - a. *where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to*

which such Court shall be deemed to be subordinate;

- b. *where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.*

2. It is clear that in the present case, proceeding is initiated on the basis of FIR and charge sheet was filed under Section 173 of Cr.P.C. It is evident in the aforesaid section that no Court shall take cognizance under Sections 172(2), 188 of the Indian Penal Code. The complaint is to be made by the public servant to any authority to which he is administratively subordinate. So it is clear that no complaint has been made by Competent Officer in the present case. Hence, No Court shall take cognizance on the basis of charge sheet under Section 188 of Cr.P.C. In this context this Court **Ashok Agrawal Vs. State of M.P.** reported in **ILR (2015) M.P. 3130** has held as under:-

I have gone through the judgment of Hon'ble Division delivered in the case of Jyotiraditya Sindhiya (supra), wherein it was held that the offence cannot be registered by police in view of the provisions of section 195 of Cr.P.C. under Section 188 of IPC. The Division Bench also relied upon the principles laid down by the Appellate Court delivered in the case of C.Muniappan and others Vs. State of Tamil Nadu reported in (2010) 9 SCC 567 and held that without complaint as defined by section 2(d) of Cr.P.C., cognizance cannot be taken under Section 188 of IPC. Applying ratio of the case of Jyotiraditya Sindhiya (supra), I find that cognizance could not be taken by the Magistrate on the basis of FIR registered by police in Crime No. 124/2011. The defects cannot be cured merely by a letter by the District Magistrate addressed to the Chief Judicial Magistrate. In such situation, I find that this application filed under Section 482 of Cr.P.C. deserves to be allowed and the impugned order passed by the learned Revisional Court and the Judicial Magistrate are liable to be set aside.

10. In the case of **Gautam Kalloo (Dr.) and another Vs. State of M.P.** reported in **2010(2) MPLJ 609** has held as under:-

7. This apart, by virtue of the provisions of Section 195(1)(a)(i) of the Code, cognizance of the

offence in question can be taken only on the complaint and writing of the Secretary of the Election Commission of India or of some other public servant to whom he is administratively subordinate.

11. The Madras High Court In the case of Jeevanandham and others Vs. State of Rep. By Inspector of Police in CrI. O.P. No. 1356/2018 has held as under:-

ÃfÃ,Ã,Ãæ25. In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

- a. *A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.*
 - b. *A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.*
 - c. *The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.*
 - d. *In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;*
 - i. *that there must be an order promulgated by the public servant;*
 - ii. *that such public servant is lawfully empowered to promulgate it;*
 - iii. *that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and*
 - iv. *that such disobedience causes or tends to cause;*
- a. *obstruction,annoyance or risk of it to any person lawfully employed; or*
 - b. *danger to human life, health or safety; or*
 - c. *a riot or affray.*
 - d. *The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can*

only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

- e. The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.*
- f. No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.*
- g. The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.*

This Court will now proceed to deal with the independent cases

12. In view of the forgoing discussion, it is evident that no Court can take cognizance under Section 188 of Cr.P.C. on the basis of charge sheet filed by the Police. Therefore, FIR No.395/2020 dated 02.07.2020 registered at Police Station Bhawarkua, Indore under Section 188 of IPC alongwith the subsequent charge sheet dated 31.12.2020 filed against the petitioner, are hereby quashed.

13. Accordingly, this petition is hereby **allowed**.

(RAJENDRA KUMAR (VERMA))
JUDGE