

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1546 OF 2020

Rafat Khan s/o Samad Yar Khan
Age : 39 years, occ : business
R/o Mill Corner, Aurangabad.

Petitioner

Versus

1. The State of Maharashtra
2. Atmaram Tukaram Gawli
Age : 46 years, occ : service
R/o Nandanwan Colony,
Aurangabad.

Respondents

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Mrs. Rashmi S. Kulkarni, Advocate for the petitioner.
Mr. S.S. Dande, A.P.P. for respondent No. 1 – State.
Respondent No. 2 served.

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CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.

DATE : 19-01-2022.

Judgment (Per Sandipkumar C. More) :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at the stage of admission.

2. The present petitioner, by invoking writ jurisdiction under Article 226 of the Constitution of India, has preferred this petition for quashing the F.I.R. in Crime No.0196 of 2020 for the offences punishable under Sections

186 and 188 of the Indian Penal Code (for short "I.P.C.") dated 17.04.2020 registered with City Chowk Police Station, Aurangabad and the criminal proceedings arising out of the same bearing S.C.C. No. 7144/2020, pending on the file of the learned Judicial Magistrate, First Class, Aurangabad.

3. According to the present respondent No.2, who is the informant in this case, he was the member of squad of Zone-1 under the leadership of one Daulat Mhaske. The said squad was formed under the Divisional Head Mr. Pramod Jadhav, who was asked by the Municipal Commissioner, Aurangabad to do certain acts for prohibition of spread of Covid-19 under letter bearing No. जा.क्र.मनपा/घ.क.व्य/२०२०/१४१, dated 11.03.2020. Zone-1 squad of which the present respondent No. 2 was the Member, was supposed to act for doing certain prohibitory things in respect of spreading of Covid-19 in the areas of Mill Corner, Padegaon, Bhavsingpura, Budhilen, Aref Colony, etc. On 17.04.2020 respondent No.2 alongwith the members of aforesaid squad was taking round in the aforesaid Zone-1 and at about 4.10 p.m. they found 4 to 5 persons sitting in Relax Medical Shop at Mill Corner without wearing masks. Respondent No. 2 and his associates made them aware about the order of Commissioner of

Municipal Corporation, Aurangabad dated 09.04.2020 and asked them as to why they did not wear the masks and for taking action about the same. Accordingly they asked one person who was without mask about his name. The said person told his name as Anis Ali. Therefore, as per rule respondent No. 2 and his associates prepared fine receipt and asked him to pay the same. However, one another person sitting in the said shop told Anis Ali for not to pay the fine amount as he had called the present petitioner, who is the husband of the then Corporator of Mill Corner Ward. Within short period the petitioner alongwith 2 to 3 persons came there in the said shop and threatened respondent No. 2 and his associates as to why they were taking action in his ward. The petitioner at the relevant time also told them that they had no right to take such action. As such, respondent No.2 lodged the aforesaid F.I.R. against the petitioner as he obstructed them while discharging their duties.

4. Learned Counsel for the petitioner submits that respondent No. 2 was not at all a public servant, therefore, no question arises of lodging F.I.R. under Sections 186 and 188 of I.P.C. by him. She further pointed out that in view of Section 195 (1) of the Code of Criminal Procedure (for short

“Cr.P.C.”) no Court can take cognizance of such F.I.R. and the crime registered on the basis of it. She further submits that filing of charge-sheet under the said crime is itself an abuse of process of law, and therefore, even if the allegations in the F.I.R. are taken as proved, then also no offence under aforesaid sections is made out.

5. Despite service of notice to respondent No.2, he remained absent.

6. Learned A.P.P. for respondent No.1 – State strongly opposed the submissions made by learned Counsel for the petitioner and on the basis of investigation papers supported the action taken against the petitioner. According to the learned A.P.P., the concerned Investigating Officer rightly arrived at a conclusion that the petitioner committed offences under Sections 186 and 188 of the I.P.C., and therefore, the Investigating Officer after due investigation filed charge-sheet against the petitioner in the Court of the learned Judicial Magistrate, First Class (3rd Court), Aurangabad.

7. It is significant to note that the prosecution has claimed that the petitioner has committed offences under

Sections 186 and 188 of the I.P.C., and therefore, for quick reference, we would like to reproduce those sections hereunder :

“186. Obstructing public servant in discharge of public functions.—Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

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”.

8. On perusal of the aforesaid sections, it appears that Section 186 of I.P.C. has provided punishment to a person who voluntarily obstructs any public servant in discharge of his public functions. Further Section 188 of

I.P.C. also provides punishment for any person for disobedience of any order promulgated by a public servant lawfully empowered to promulgate such order.

9. Learned Counsel for the petitioner has relied upon the following two judgments :

- (i) Judgment dated 21.09.2020 passed by this Court (Coram : V.M. Deshpande and Amit B. Borkar, JJ.) at Nagpur Bench, in Criminal Application (APL) No. 453 of 2020
- (ii) Judgment dated 06.10.2021 passed by this Court (Coram : V.K. Jadhav and Shrikant D. Kulkarni, JJ.) in Criminal Writ Petition No. 853 of 2020)

According to learned Counsel for the petitioner, filing of charge-sheet in the present crime is itself barred under Section 195 (1) of Cr.P.C. Further, the respondent No.2 who is the informant in the present case, cannot be a public servant at all.

10. We have carefully gone through Section 195 (1) of Cr.P.C., which we would like to reproduce below :

“195- (1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code 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”.

11. On going through the aforesaid section, it is clearly evident that there is clear-cut bar for taking cognizance of the offence punishable under Sections 172 to 188 (both inclusive) except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Further, in the first case relied on by the learned Counsel for the petitioner, there is reference of the observation of Hon'ble Supreme Court in the case of **M.S. Ahlawat vs. State of Haryana [2000 (1) SCC 278]**, wherein it is held in para 5 as below :

“5. Provisions of section 195 CrPC are mandatory and no Court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section”.

12. Further, a reference of another case before the Supreme Court i.e. **Daulat Ram vs. State of Punjab (AIR 1962 SC 1206)** has given, wherein the Hon'ble Supreme Court has held that the prosecution under Section 182 of the I.P.C. must be on a complaint in writing by the Tahsildar (public servant). In view of absolute bar against the Courts for taking cognizance of the offence punishable under Section 182 of the I.P.C., except in the manner provided by Section 195 of

Cr.P.C., the said judgment equally applies to the offence under Section 188 also.

13. This Court, in the second judgment relied on by the learned Counsel for the petitioner, has also taken similar view for quashing the F.I.R. under Section 188 of I.P.C.

14. In the present case, the informant i.e. respondent No.2 is not a public servant as contemplated in Section 186 of I.P.C. He was merely a Member of squad which was formed to take prohibitory measures in spreading of Covid-19 at the relevant time. Further, from the F.I.R. itself it appears that he was merely working in Corporation, Aurangabad in the Solid Waste Department. Further, at the time of the alleged incident he was not discharging any duty of public servant, but was merely appointed for taking precautionary measures during the spread of Covid-19. He was not even an administrative subordinate of the Commissioner of Municipal Corporation, Aurangabad, who had promulgated order under subject. Therefore, the bar under Section 195 (1) of Cr.P.C. clearly applies in the instant matter, and thus, the learned Judicial Magistrate, First Class, Aurangabad in whose Court S.C.C. No. 7144 of 2020 is pending in respect of the aforesaid crime, is not at all empowered to take cognizance of the same.

15. Therefore, having regard to the aforesaid facts and discussion, we are of the opinion that the criminal prosecution launched against the present petitioner under Sections 186 and 188 of the I.P.C. is liable to be quashed in view of the specific bar under Section 195 (1) of Cr.P.C. Accordingly, we pass the following order.

ORDER

- (i) Criminal Writ Petition is hereby allowed in terms of prayer clause [A].
- (ii) Rule is made absolute in above terms.
- (iii) Criminal Writ Petition is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)

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