(2020) 10 CHH CK 0016

Chhattisgarh High Court

Case No: Writ Petition (Cr.) No. 310 Of 2020

Dr. Apurva Ghiya		APPELLANT
	Vs	
State Of Chhattisgarh, Through Collector, District Rajnandgaon And Ors		RESPONDENT

Date of Decision: Oct. 7, 2020

Acts Referred:

- Indian Penal Code, 1860 - Section 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188
- Code Of Criminal Procedure, 1973 - Section 2(d), 41, 58, 154, 156, 157, 173, 195, 195(1), 195(1)(a)(i), 482
- Police Act, 1861 - Section 30(2)
- Drugs And Cosmetics Act, 1940 - Section 32
- Constitution Of India, 1950 - Article 142, 226

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Shalvik Tiwari, Dr. Veena Nair, Ravi Kumar Bhagat, Rajesh Kumar Kesharwani

Final Decision: Allowed

Judgement

Sanjay K. Agrawal, J

1. Proceedings of this matter have been taken-up for final hearing through video conferencing.

2. The petitioner is a young medical graduate. She after passing her graduate examination (MBBS), decided to prepare for civil services examination

and was staying at New Delhi since last few months and meanwhile, in March, 2019, COVID-19 stepped-in followed by countrywide lock-down and

closure of transport facility and she was strained at New Delhi. When the position eased, she applied for issuance of E-pass for travelling from New

Delhi to the State of Chhattisgarh to her home town situated at Ambagarh Chowki, District Rajnandgaon and accordingly, she was granted E-pass by

the State of Chhattisgarh. She reached Rajnandgaon on 7-6-2020 and next day, she got herself examined at Community Health Centre, Ambagarh

Chowki and also informed the Chief Medical & Health Officer, Rajnandgaon on 10-6-2020 about her arrival, but she failed to inform to the Chief

Municipal Officer, Nagar Panchayat, Ambagarh Chowki â€" respondent No.3 herein, about her arrival from New Delhi that she came from other

State as required by the order dated 18-5-2020 passed by the Collector-cum-District Magistrate, Rajnandgaon and thereafter, she was also tested

Corona positive pursuant to which on 18-6-2020, respondent No.3 â€" Chief Municipal Officer, Nagar Panchayat, Ambagarh Chowki, lodged first

information report (FIR) at Police Station: Ambagarh Chowki informing that though she reached from New Delhi to Ambagarh Chowki, Distt.

Rajnandgaon, on 7-6-2020, but she did not inform the same as mandated by the Collector and she has been tested Corona positive and she has been

admitted in the hospital, as such, offence under Section 188 of the IPC be registered against her and therefore action be taken against her pursuant to

which FIR No.112/2020 dated 18-6-2020 has been registered by Police Station: Ambagarh Chowki for offence under Section 188 of the IPC which is

sought to be quashed in this writ petition by the petitioner herein.

3. The petitioner seeks quashment of above-stated FIR principally on the ground that by virtue of the provision contained in Section 195(1)(a)(i) of the

Code of Criminal Procedure, 1973 (for short, â€˜the Codeâ€™), for offence under Section 188 of the IPC, no cognizance can be taken by the

Magistrate unless complaint in writing is made by the public servant concerned and therefore police cannot register FIR under Section 154 of the

Code and investigate the case and thereafter, file complaint, as such, since cognizance of the offence can be taken in a particular manner on a

complaint filed by the public servant, cognizance of the offence under Section 188 of the IPC on the police report is absolutely barred and therefore no

FIR under Section 154 of the Code can be registered for offence punishable under Section 188 of the IPC. It has also been pleaded that the order

dated 18-5-2020 was never promulgated by the Collector in the official gazette or by beat of drum, therefore, she did not have information about the

same and as such she could not inform the Collector about her arrival though she herself submitted her for medical examination on the next day of her

arrival, on 8-6-2020 which is apparent from the documents Annexures P-3 & P-5, however, it is a pure and simple technical error and the State is

having complete information as she came from Delhi to Rajnandgaon after E-pass having been granted by the State Government, therefore, for

technical omission of not informing to the Chief Municipal Officer, Nagar Panchayat, Ambagarh Chowki who is an officer subordinate to the State

Government / District Collector, it cannot be held that she has omitted to comply the order dated 18-5-2020 issued by the Collector. Even otherwise,

respondent No.3 Chief Municpal Officer being subordinate to the Collector cannot make report / lodge FIR for offence under Section 188 of the IPC,

as such, the FIR deserves to be quashed in the light of the judgment rendered by the Supreme Court in the matter of State of Haryana and others v.

Bhajan Lal and others 1992 Supp (1) SCC 335.

4 Return has been filed by the State / respondents No.1, 2, 4 & 5 stating inter alia that the petitioner though is a medical graduate, yet, she failed to

inform the Chief Municipal Officer as per the notification dated 18-5-2020 issued by the District Magistrate and thereby she remained moving here

and there and also spread the dreadful disease (COVID-19) to number of persons of the locality including servants working in the grocery shop run by

her father, therefore, FIR has rightly been lodged against her for commission offence under Section 188 of the IPC which cannot be taken exception

to by her, as such, the writ petition deserves to be dismissed.

5 Mr. Shalvik Tiwari, learned counsel appearing for the writ petitioner would submit that offence under Section 188 of the IPC can be taken

cognizance of by the jurisdictional Magistrate only on the complaint in writing of the public servant concerned or of some other public servant to whom

he is administratively subordinate. Such a provision contained in Section 195(1)(a)(i) of the Code is mandatory in nature, therefore, cognizance for

offence under Section 188 of the IPC cannot be taken on the basis of police report and cognizance can only be taken on the complaint in writing as

defined under Section 2(d) of the Code and as such, FIR for offence under Section 188 of the IPC cannot be registered against the petitioner under

the provision contained in Section 154 of the Code and investigation cannot be done by Police Station: Ambagarh Chowki. Mr. Tiwari, learned counsel,

would further submit that order dated 18-5-2020 (Annexure P-10) alleged to be promulgated by the Collector-cum-District Magistrate was not never

duly promulgated as neither it was published in the official gazette nor it was promulgated by beat of drum in the locality, therefore, the petitioner was

not aware of the said order and thus, it cannot be held that she has committed the offence under Section 188 of the IPC, particularly when she has

submitted herself for medical examination to the Community Health Centre and also reported to the Chief Medical & Health Officer and Block

Medical Officer which is evident from Annexure P-3, as such, the impugned FIR deserves to be quashed.

6. Dr. Veena Nair, learned Deputy Advocate General, and Mr. Ravi Kumar Bhagat, learned Deputy Government Advocate, appearing on behalf of

the State / respondents No.1, 2, 4 & 5, would submit that offence under Section 188 of the IPC is cognizable offence and therefore police is duty

bound to register FIR against the petitioner in view of the provision contained in Section 154 of the Code immediately on an information and proceed to

investigate the case under Sections 156 & 157 of the Code and thereafter, file final report under Section 173 of the Code. They would further submit

that by virtue of Section 195(1)(a)(i) of the Code, taking cognizance of offence punishable under Sections 172 to 188 of the IPC is barred except on

the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate; that does not

mean that police cannot register offence and investigate the cognizable offence and the bar as contained in Section 195(1)(a)(i) of the Code cannot

stretch to such an extent barring the registration of FIR under Section 154 of the Code. The order of the Collector was duly promulgated and the

petitioner by not informing about her arrival to the Chief Municipal Officer â€" respondent No.3, has contributed in spreading the dreadful disease i.e.

Corona Virus in the locality and as such, the FIR has rightly been registered against her and the writ petition deserves to be dismissed.

7. Mr. Rajesh Kumar Kesharwani, learned counsel appearing for respondent No.3, would also submit in same line as submitted by the State counsel

and would submit that FIR has rightly been registered against the petitioner at the instance of the Chief Municipal Officer, Nagar Panchayat,

Ambagarh Chowki and the writ petition deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost

circumspection.

9. The question that would emanate for consideration is, whether FIR can be registered under Section 154 of the Code for offence under Section 188

of the IPC and whether such an offence can be investigated by the police in view of the provision contained in Section 195(1)(a)(i) of the Code?

10 In order to decide the dispute, it would be appropriate to notice the definition of â€œcognizable offenceâ€ contained in Section 2(c) of the Code

which states as under: -

â€œ(c) ""cognizable offence"" means an offence for which, and ""cognizable case"" means a case in which, a police officer may, in accordance with the

First Schedule or under any other law for the time being in force, arrest without warrant;â€

Section 2(d) of the Code defines â€œcomplaintâ€. It states as under: -

â€œ(d) ""complaint"" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person,

whether known or unknown, has committed an offence, but does not include a police report.

Explanation.â€"A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be

deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;â€

Section 2(h) of the Code defines â€œinvestigationâ€ which is as follows: -

â€œ(h) ""investigation"" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other

than a Magistrate) who is authorised by a Magistrate in this behalf;â€

â€œPolice reportâ€ is defined in Section 2(r) of the Code which is as under:-

â€œ(r) ""police report"" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;â€

k Chapter XII of the Code states about information to the police and their powers to investigate. Section 154 of the Code speaks about information in

cognizable cases. Sub-section (1) of Section 154 provides that 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. Section 155 deals with information as

to non-cognizable cases and investigation of such cases. Section 156 enumerates police officerâ€™s power to investigate cognizable case. Section

173 provides for report of police officer given on completion of investigation. Section 190 provides for cognizance of offences by Magistrates. Section

195 prohibits the Court from taking cognizance of the offences mentioned therein except on the complaint in writing by the persons named therein.

(l) At this stage, it would be appropriate to notice Section 195(1) (a)(i) of the Code which states as under: -

â€œ195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents

given in evidence.â€"(1) No Court shall take cognizanceâ€

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

(b) xxxÂ xxxÂ xxx

(c) xxxÂ xxxÂ xxx

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;â€

Â The object of the above-stated provision is to protect persons from being needlessly harassed by vexatious prosecutions in retaliation. It is a check

to protect innocent persons from criminal prosecution which may be activated by malice or ill will.

Â A careful perusal of Section 195(1) of the CrPC would show that the general rule is that any person having knowledge may set the law in motion

by making a complaint, even though he is not the person interested in or assisted by the offence to the general rule. Section 195 of the Code provides

an exception and forbids cognizance having been taken of the offence referred to therein except on the complaint in writing by the court or by some

other court to which such court is subordinate. (See Lalji Haridas v. The State of Maharashtra and another AIR 1964 SC 1154.)

(o) In the matter of Basir-ul-Huq and others v. The State of West Bengal on the complaint of Dhirendra Nath Bera AIR 1953 SC 293, the Supreme

Court qua Sections 182 & 188 of the IPC, held as under: -

â€œ(9) Section 195, Criminal P.C., on which the question raised is grounded, provides inter alia, that no Court shall take cognizance of an offence

punishable under Ss. 172 to 188, Penal Code, except on the complaint in writing of the public servant concerned, or some other public servant to whom

he is subordinate. The statute thus requires that without a complaint in writing of the public servant concerned no prosecution for an offence under S.

182 can be taken cognizance of. ...â€

16. In the matter of Daulat Ram v. State of Punjab AIR 1962 SC 1206, the Supreme Court has held that there is an absolute bar against the court

taking seisin of the case under Section 182 of the IPC except in the manner provided by Section 195 of the CrPC. It was further held that the

complaint must be in writing by the public servant concerned and trial under Section 182 of the IPC without complaint in writing is therefore without

jurisdiction ab initio.

17. Similarly, in the matter of Govind Mehta v. The State of Bihar AIR 1971 SC 1708, their Lordships of the Supreme Court have held that Section

195 of the CrPC is in fact a limitation on the unfettered powers of a magistrate to take cognizance under Section 190, he must examine the facts of

the complaint before him and determine whether his power of taking cognizance under Section 190 has or has not been taken away by any of the

clauses (a) to (c) of Section 195(1). It was further held that if there is a non-compliance with the provisions of Section 195, the Magistrate will have

no jurisdiction to take cognizance of any of the offences enumerated therein.

(r) Likewise, in the matter of C. Muniappan and others v. State of Tamil Nadu (2010) 9 SCC 567, their Lordships of the Supreme Court held that the

provisions of Section 195 of the CrPC are mandatory and non-compliance of the same would vitiate the prosecution. It was observed as under: -

â€œ33. Thus, in view of the above, the law can be summarised to the effect that there must be a complaint by the pubic servant whose lawful order

has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance of it would vitiate

the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without such complaint. In the absence of

such a complaint, the trial and conviction will be void ab initio being without jurisdiction.â€

19. The principle of law laid down in C. Muniappan (supra) has been followed with approval by their Lordships of the Supreme Court in the matter of

Babita Lila and another v. Union of India (2016) 9 SCC 647 in which it has been held as under: -

â€œ46. That the provisions of Section 195 of the Code are mandatory so much so that non-compliance thereof would vitiate the prosecution and all

consequential orders, has been ruled by this Court, amongst others in C. Muniappan v. State of T.N. (supra) wherein the following observations in

Sachida Nand Singh v. State of Bihar (1998) 2 SCC 493 were recorded with approval: (SCC pp. 497-98, para 7)

â€œ7. â€¦ Section 190 of the Code empowers â€œany Magistrate of the first classâ€ to take cognizance of â€œany offenceâ€ upon receiving a

complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the Magistrate, and the general

right of a person to move the court with a complaint is to that extent curtained. It is a well-recognised canon of interpretation that provision curbing the

general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise. ...

(emphasis supplied)â€

Â In the matter of State of U.P. v. Mata Bhikh and others (1994) 4 SCC 95, their Lordships of the Supreme Court, with respect to Section 195(1) (a)

(i) of the Code, held as under: -

â€œ6. The object of this section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person

actuated by malice or ill-will or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this

section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a

complaint in writing of 'the public servant concerned' as required by the section without which the trial under Section 188 of the Indian Penal Code

becomes void ab initio. See Daulat Ram v. State of Punjab (supra). To say in other words a written complaint by a public servant concerned is sine

qua non to initiate a criminal proceeding under Section 188 of the IPC against those who, with the knowledge that an order has been promulgated by a

public servant directing either 'to abstain from a certain act, or to take certain order, with certain property in his possession or under his management'

disobey that order. Nonetheless, when the court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to

initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the section itself which is to the effect that no court

can take cognizance of any offence punishable under Sections 172 to 188 of the IPC except on the written complaint of 'the public servant concerned'

or of some other public servant to whom he (the public servant who promulgated that order) is administratively subordinate.â€

21 Similarly, in Sachida Nand Singh8 (supra), their Lordships of the Supreme Court while dealing with the issue held as under: -

â€œ7. Even if the clause is capable of two interpretations we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of

the Code empowers ""any magistrate of the first class"" to take cognizance of ""any offence"" upon receiving a complaint, or police report or information

or upon his own knowledge. Section 195 restricts such general powers of the magistrate, and the general right of a person to move the court with a

complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must

normally receive strict interpretation unless the statute or the context requires otherwise (Abdul Waheed Khan v. Bhawani AIR 1966 SC 1718).â€

22. In the matter of M.S. Ahlawat v. State of Haryana and another AIR 2000 SC 168, the Supreme Court held that the provisions of Section 195 of

the Code 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.

23. In the matter of Jeewan Kumar Raut and another v. Central Bureau of Investigation (2009) 7 SCC 526, which is the case under the

Transplantation of Human Organs Act, 1994 (TOHO Act) of which Section 22 stipulates that no court shall take cognizance of an offence under this

Act except on a complaint made by the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or the

State Government or, as the case may be, the Appropriate Authority; their Lordships of the Supreme Court considered the question whether the

authorised officer has power to investigate as per the provisions of the Code, expressing doubt, it was held as under:-

â€œ25. Section 22 of TOHO prohibits taking of cognizance except on a complaint made by an appropriate authority or the person who had made a

complaint earlier to it as laid down therein. The respondent, although, has all the powers of an investigating agency, it expressly has been statutorily

prohibited from filing a police report. It could file a complaint petition only as an appropriate authority so as to comply with the requirements contained

in Section 22 of TOHO. If by reason of the provisions of TOHO, filing of a police report by necessary implication is necessarily forbidden, the

question of its submitting a report in terms of sub-section (2) of Section 173 of the Code did not and could not arise. In other words, if no police report

could be filed, sub-section (2) of Section 167 of the Code was not attracted.

28. To put it differently, upon completion of the investigation, an authorised officer could only file a complaint and not a police report, as a specific bar

has been created by Parliament. In that view of the matter, the police report being not a complaint and vice versa, it was obligatory on the part of the

respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner

laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a

report which course of action could have been taken recourse to but for the special provisions contained in Section 22 of TOHO.

36. We are, however, not oblivious of some decisions of this Court where some special statutory authorities like authorities under the Customs Act

have been granted all the powers of the investigating officer under a special statute like the NDPS Act, but, this Court has held that they cannot file

charge-sheet and to that extent they would not be police officers. (See Ramesh Chandra Mehta v. State of W.B. AIR 1970 SC 940 and Raj Kumar

Karwal v. Union of India (1990) 2 SCC 409.)

Â In the present case, however, the respondent having specially been empowered both under the 1946 Act as also under the Code to carry out

investigation and file a charge-sheet is precluded from doing so only by reason of Section 22 of TOHO. It is doubtful as to whether in the event of

authorisation of an officer of the Department to carry out investigation on a complaint made by a third party, he would be entitled to arrest the accused

and carry on investigation as if he is a police officer. We hope that Parliament would take appropriate measures to suitably amend the law in the near

future.â€

24. In the matter of Saloni Arora v. State of NCT of Delhi AIR 2017 SC 391 wherein, in violation of the provisions contained in Section 195(1)(a) of

the Code, the accused was prosecuted for the offence punishable under Section 182 of the IPC, their Lordships of the Supreme Court quashed the

complaint following the judgment of the Supreme Court in Daulat Ram (supra) and held as under:-

â€œ12) It is not in dispute that in this case, the prosecution while initiating the action against the appellant did not take recourse to the procedure

prescribed under Section 195 of the Code. It is for this reason, in our considered opinion, the action taken by the prosecution against the appellant

insofar as it relates to the offence under Section 182 IPC is concerned, is rendered void ab initio being against the law laid down in the case of Daulat

Ram (supra) quoted above.â€

25. The Madras High Court in the matter of Jeevanandham and others v. State and another 2019(1) MLJ (Cri) 36 clearly held that a Police Officer

cannot register an FIR for any of the offences falling under Section 172 to 188 of the IPC and observed as under: -

â€œ25. InÂ viewÂ ofÂ theÂ discussions,Â theÂ 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;

that there must be an order promulgated by the public servant;

that such public servant is lawfully empowered to promulgate it;

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

that such disobedience causes or tends to cause;

obstruction, annoyance or risk of it to any person lawfully employed; or

danger to human life, health or safety; or

a riot or affray.

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.

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.

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.

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.â€

26 In an extremely recent judgment in the matter of Union of India Ashok Kumar Sharma and others Criminal Appeal No.200 of 2020, decided on 28-

8-2020, their Lordships of the Supreme Court while considering registration of FIR by the police in the light of the provisions contained in Section 32 of

the Drugs and Cosmetics Act, 1940, held as under: -

â€œ150. Thus, we may cull out our conclusions/directions as follows:

(9) In regard to cognizable offences under Chapter IV of the Act, in view of Section 32 of the Act and also the scheme of the CrPC, the Police

Officer cannot prosecute offenders in regard to such offences. Only the persons mentioned in Section 32 are entitled to do the same.

(35) There is no bar to the Police Officer, however, to investigate and prosecute the person where he has committed an offence, as stated under

Section 32(3) of the Act, i.e., if he has committed any cognizable offence under any other law.

(61) Having regard to the scheme of the CrPC and also the mandate of Section 32 of the Act and on a conspectus of powers which are available with

the Drugs Inspector under the Act and also his duties, a Police Officer cannot register a FIR under Section 154 of the CrPC, in regard to cognizable

offences under Chapter IV of the Act and he cannot investigate such offences under the provisions of the CrPC.

IV. Having regard to the provisions of Section 22(1)

4. of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without

any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in D.K. Basu v. State of West Bengal

(1997) 1 SCC 416 and to follow the provisions of CrPC.

22. It would appear that on the understanding that the Police Officer can register a FIR, there are many cases where FIRs have been registered in

regard to cognizable offences falling under Chapter IV of the Act. We find substance in the stand taken by learned Amicus Curiae and direct that

they should be made over to the Drugs Inspectors, if not already made over, and it is for the Drugs Inspector to take action on the same in accordance

with the law. We must record that we are resorting to our power under Article 142 of the Constitution of India in this regard.

VI. Further, we would be inclined to believe that in a number of cases on the understanding of the law relating to the power of arrest as, in fact,

evidenced by the facts of the present case, police officers would have made arrests in regard to offences under Chapter IV of the Act. Therefore, in

regard to the power of arrest, we make it clear that our decision that Police Officers do not have power to arrest in respect of cognizable offences

under Chapter IV of the Act, will operate with effect from the date of this Judgment.

VII. We further direct that the Drugs Inspectors, who carry out the arrest, must not only report the arrests, as provided in Section 58 of the CrPC, but

also immediately report the arrests to their superior Officers.â€

27. The Supreme Court in the matter of Ushaben v. Kishorbhai Chunilal Talpada and others (2012) 6 SCC 353 referring to the Explanation appended

to Section 2(d) of the Code, clearly held that a report made by a police officer after investigation of a non-cognizable offence is to be treated as a

complaint and the officer by whom such a report is made is to be deemed to be the complainant.

28. In the matter of Chittaranjan Das v. State of West Bengal and others AIR 1963 Cal 191, the Calcutta High Court has held that the words â€œit

does not include a police reportâ€ in Section 2(d) of the Code refers to report under Section 173 of the Code after completion of investigation, not any

other report by police officer.

29. Similarly, the Karnataka High Court in the matter of Chandrasha and others v. The State 1989 Cri. L.J. NOC 97 (Kant.) has also held that

charge-sheet on a cognizable offence is not complaint, it is police report.

30. From a conspectus of the aforesaid judgments rendered by their Lordships of the Supreme Court (supra) and the Madras High Court (supra), it is

quite vivid that in order to prosecute an accused for the offence punishable under Section 188 of the IPC, it is imperative to undergo the procedure

envisaged under Section 195(1)(a)(i) of the Code i.e. complaint in writing of public servant concerned or some other public servant to whom he is

subordinate, otherwise cognizance of offence under Section 188 of the IPC cannot be taken and if this imperative procedure is not complied with, the

entire prosecution for offence under Section 188 of the IPC would be rendered void ab initio, as Section 195 of the Code is an exception to the general

rule contained in Section 190 of the Code wherein any person can set the law in motion by making complaint. The provisions of Section 195 of the

Code are mandatory and non-compliance with it will make the entire process void ab initio and without jurisdiction as well. As such, since cognizance

of offence under Section 188 of the IPC can be taken on the basis of complaint in writing filed by the public servant concerned within the meaning of

Section 2(d) of the Code, offence under Section 188 of the IPC being cognizable offence is not also saved by Explanation appended to Section 2(d) of

the Code, as by Explanation to Section 2(d) of the Code, report made by police officer after investigation of non-cognizable offence is only to be

treated as complaint and person making the complaint is to be treated as complainant and police report or FIR is not a complaint and further, charge-

sheet is a report of police officer. Therefore, the first information report also cannot be registered under Section 154 of the Code for offence under

Section 188 of the IPC, as registration of FIR after investigation would culminate into police report under Section 173(8) of the Code which cannot be

taken cognizance of by the Magistrate under Section 190 of the Code, as such registration of FIR for offence under Section 188 IPC is barred.

31. At this stage, the submission of learned State counsel that since the offence punishable under Section 188 of the IPC is a cognizable offence,

therefore, police is duty bound to register FIR under Section 154 of the Code immediately on information as held by the Supreme Court in the matter

of Lalita Kumari v. Government of Uttar Pradesh and others (2014) 2 SCC 1 and to proceed to investigate as provided under Sections 156(3) & 157

of the Code, deserves to be noticed. Such a submission is not acceptable, because, merely because the offence under Section 188 of the IPC is

cognizable offence, that by itself does not authorise the police officer to register FIR under Section 154 of the Code for such offence, the reason being

that the registration of FIR would necessarily result in submission of police report under Section 173(8) of the Code which is specifically barred by

Section 195(1)(a) read with Section 2(d) of the Code. The definition of â€œcomplaintâ€ contained in Section 2(d) of the Code makes it clear that

complaint does not include a police report. Their Lordships of the Supreme Court in Ashok Kumar Sharmaâ€™s case (supra), in the light of Section

32 of the Drugs and Cosmetics Act, 1940, held that the principles laid down in Lalita Kumari (supra) could not be applicable to registration of FIR for

offence under the Drugs and Cosmetics Act, 1940 and observed as under: -

â€œ66. We would think that this Court was not, in the said case, considering a case under the Act or cases similar to those under the Act, and we

would think that having regard to the discussion which we have made and on a conspectus of the provisions of the CrPC and Section 32 of the Act,

the principle laid down in Lalita Kumari (supra) is not attracted when an information is made before a Police Officer making out the commission of an

offence under Chapter IV of the Act mandating a registration of a FIR under Section 154 of the CrPC.â€

As such, the argument raised in this behalf by the learned State Counsel deserves to be rejected following the principle of law laid down in this behalf

by their Lordships of the Supreme Court in Ashok Kumar Sharmaâ€™s case (supra).

32 The next submission of Mr. Shalvik Tiwari, learned counsel appearing for the petitioner, is that the order dated 18-5-2020 was not promulgated by

beat of drum or by publication of notification in the official gazette, therefore, it was not an order which can be taken cognizance of and for violation of

which the petitioner cannot be prosecuted under Section 188 of the IPC. This submission is a premature submission to be noticed, as the petitioner has

come to this Court for quashment of the FIR and FIR is not an encyclopedia of the entire prosecution case and nothing further has been brought on

record to demonstrate the said fact. Therefore, such a submission is premature and at this stage, it would be inappropriate to deal with such

submission in detail and to record a finding on the same.

33 In Bhajan Lalâ€™s case (supra), the Supreme Court laid down the parameters in paragraph 102 of its report for quashing criminal proceeding /

FIR exercising jurisdiction under Article 226 of the Constitution of India or under Section 482 of the Code, relevant portion of which states as under: -

â€œ102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under

Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein

such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be

possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of

myriad kinds of cases wherein such power should be exercised.

(1) to (5) xxx xxx xxx

6 Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is

instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing

efficacious redress for the grievance of the aggrieved party.

7 xxxÂ xxxÂ xxxâ€

34. Resultantly, it is held that for the offence punishable under Section 188 of the IPC, no FIR can be registered under Section 154 of the Code in the

light of the legal analysis and discussion made herein-above. Accordingly, FIR No.112/2020 dated 18-6-2020 registered against the petitioner by Police

Station: Ambagarh Chowki, Distt. Rajnandgaon for the offence punishable under Section 188 of the IPC is hereby quashed following the decision of

the Supreme Court in Bhajan Lalâ€™s case (supra).

35. The writ petition is allowed to the extent sketched herein-above. No order as to cost(s)