

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

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 30th OF JUNE, 2023

MISC. CRIMINAL CASE No. 50491 of 2021

BETWEEN:-

**1. DR. SIBI MS S/O K.B. MURLIDHARAN,
AGED ABOUT 39 YEARS, R/O SIVAADAA
NIHARAKAL, PARANOID P.O. KOLLAM,
KERALA, PRESENT ADDRESS
TELEFORMACE, INDORE (MADHYA
PRADESH)**

**2. KRISHNA URF VISHNU S/O P. WALTON,
AGED ABOUT 28 YEARS, R/O BOOOKER
HOUSE, PERINA NOTEGARASTATION,
ANDHIKATA, DISTRICT MISU, KERLA.
PRESENT ADDRESS- TELEPERFORMANCE
(MADHYA PRADESH)**

.....APPLICANTS

(BY SHRI YOGESH KUMAR MITTAL - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH P.S. VIJAY
NAGAR, INDORE (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI D. G. MISHRA - GOVERNMENT ADVOCATE)

*This appeal coming on for admission this day, the court passed
the following:*

ORDER

The applicants have filed present petition under Section 482 of

Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') for quashment of FIR registered at Crime No.1017/2018 at Police Station Vijay Nagar, Indore as well as charge sheet and all other consequential proceedings pending before the Judicial Magistrate First Class, Indore in Criminal Case No.9512/2018.

2. The necessary facts for disposal of present petition in short are that the office of Election Commission directed the State Government to declare public holiday on 28/11/2018 for Indore on account of State Legislative Election in exercise of Section 135-B of the Representation of People Act, 1951. In pursuance thereto District Collector-cum-District Electoral Officer of Indore declared holiday on 28/11/2018 for Indore district. On the same day, Flying Squad Team for the Election Control Area 205/2 of Indore sent a written complaint to the Station House Officer, Vijay Nagar, Indore alleging that employees were working in the firm “Teleperformance” and no holiday was granted to its employees by the present applicants. Accordingly, they have disobeyed the order issued by the public authority and committing an offence under Section 188 of the Indian Penal Code, 1860 (in short “IPC”). Accordingly, offence under Section 188 of IPC was registered.

3. After completion of inquiry police filed charge sheet for offence under Section 188 of IPC and before the JMFC, Indore Criminal Case No.9512/2018 has been registered against the applicants.

4. Learned counsel for the applicants contended that the Trial Court has taken cognizance of the offence under Section 188 of IPC on the basis of charge sheet filed by the Police. It is submitted by the Counsel for the applicants that in view of the provisions of Section 195

of Cr.P.C., only complaint would lie and the Charge sheet cannot be filed for offence under Section 188 of Cr.P.C.

5. *Per contra*, it is submitted by the Counsel for the State that since, the applicants had disobeyed the order of the Collector, therefore, the charge sheet has been filed for offence under Section 188 of IPC. It is further submitted that the charge sheet filed by the Police can be treated as a complaint.

6. Heard learned Counsel for the parties at length and perused the record.

7. Section 188 of IPC reads 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.”

Thus, from the plain reading of Section 188 of IPC, it is clear that where an order has been promulgated by a public servant lawfully

empowered to promulgate such order then in case of such disobedience, an offence under Section 188 of IPC would be *prima-facie* made out.

8. From the allegations, it is clear that District Electoral Officer / Collector, Indore *vide* order dated 10/10/2018 declared holiday on 28/11/2018 for the Indore district on account of Legislative Election and the same was published in the news papers. From perusal of the record, it appears that Superintendent of Police (East), Indore has also sent a memo on 07/12/2018 to District Magistrate, Indore by stating that he should made complaint before the concerned Court but in spite of the aforesaid memo, no public authority has filed complaint before the competent Court. However, the moot question for determination before this Court is whether the charge sheet can be filed for the offence under Section 188 of IPC or not.

9. Section 195 of CrPC reads 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 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,

(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 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 subsection (1) any authority to which he is administratively subordinate may order the 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 subsection (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.”

Thus, it is clear that no Court shall take cognizance of any offence punishable under Sections 172 to 188 (both inclusive) of IPC except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf or of some other Court to which that Court is subordinate.

10. In the present case, complaint has been lodged on the instructions of District Electoral Officer / Collector. The FIR cannot be included within the meaning of complaint.

11. Complaint has been defined under Section 2 (d) of Cr.P.C. which reads as under:

“(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.- 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;”

From the plain reading of this definition, it is clear that complaint does not include a police report. As the offence under Section 188 of IPC is a cognizable offence, therefore, the police report filed under Section 173 of Cr.P.C. cannot be treated as a complaint and the Court below could not have taken cognizance of the offence on the basis of the police report.

12. Accordingly, FIR registered at Crime No.1017/2018 at Police Station Vijay Nagar, Indore as well as charge sheet and all other

consequential proceedings pending before the Judicial Magistrate First Class, Indore in Criminal Case No.9512/2018 are hereby quashed. However, the respondents are at liberty to file the complaint as provided under Section 195 of Cr.P.C.

13. With aforesaid observations, the petition preferred under Section 482 of Cr.P.C. succeeds and is hereby allowed.

Certified copy as per rules.

(ANIL VERMA)
J U D G E

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