

2019 PLRonline 3403 (Del.)

DELHI HIGH COURT

Justice RC Chopra

Mohan Kukreja v The State Govt. of NCT of Delhi

CRL.M.C. 662/2018

08 January 2019

Indian Penal Code, 1860 (XV of 1860) S. 188 - Cr.P.C., 1973 (II of 1974), Section 2(d), 173(8) , 195 - Complaint does not satisfy the requirements of Section 195(1)(a)(i) Cr.P.C. i.e., in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of Section 2(d) of Cr.P.C. i.e., a report of a police officer after investigation of commission of a non-cognizable offence - The complaint made by the respondent No.2 was a complaint made to the SHO and is not a complaint to the Magistrate so as to satisfy the requirements of Section 195(1)(a)(i) Cr.P.C. - The final report filed by the SHO is not a report of a Police Officer of commission of a non-cognizable offence so as to satisfy the requirements of Section 2(d) of Cr.P.C. - Alleged complaint does not satisfy the requirements of Section 195 Cr.P.C. Non-compliance of Section 195 Cr.P.C. is a defect which cannot be cured subsequently as is sought to be done by the prosecution by filing a supplementary chargesheet or by way of a complaint given by the public servant after cognizance has been taken. [Para 12-14]

CRL.M.C. 662/2018 & CRL.M.A. 2398/2018 (stay), Crl.M.A.2400/2018 (seeking permission to file additional documents)

1. Petitioner impugns orders dated 09.12.2016 and 14.11.2017 of the Trial Court, whereby, the Trial Court has taken cognizance of the offence under Section 188 Indian Penal Code, 1860.

2. Learned counsel for the petitioner submits that in terms of Section 195 Criminal Procedure Code, 1973 (Cr.P.C.), no Court can take cognizance of an offence under Section 188 IPC. except on a complaint of the public servant concerned.

3. It is contended that the Trial Court erred in taking cognizance on 09.12.2016 and erred in not noticing the fact that no complaint satisfying the requirements of Section 2(d) of Cr.P.C. had been filed and cognizance was taken on a police report. It is further contended that, subsequently, a complaint under Section 195 Cr.P.C. was filed on 05.05.2017. However, the Trial Court without following the procedure prescribed took cognizance of the supplementary chargesheet.

4. Brief facts leading to the present petition are that the petitioner was having a licence of 'M Cinemas' (earlier called Sapna Cinema). An inspection was carried out by respondent No. 2 - ADM/CEO, District Disaster Management Authority and certain alleged shortcomings were identified. The premises were directed to be closed for entry for visitors.

5. On the alleged failure of the petitioner to comply with the directions and to rectify the shortcomings, a complaint was filed by the respondent No.2 with the SHO, Police Station Amar Colony on 19.02.2016 under Section 188 IPC. Based on the complaint, an FIR was registered on 26.05.2016. Consequent to the registration of the FIR, final report/chargesheet was filed on 22.11.2016. Based on the final report, cognizance was taken by the Magistrate by the impugned order dated 09.12.2016 and summons were issued.

6. By the impugned order dated 14.11.2017, the Trial Court was of the view that a written complaint had been given on 19.02.2016 by Respondent No.2 - the ADM/CEO, District Disaster Management Authority, which fell within the definition of complaint given by a public servant and as such, was of the view that cognizance had been correctly taken and thereafter framed notice under Section 251 Cr.P.C. against the petitioner for the offence under Section 188 IPC.

7. Section 195 Cr.P.C. 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 an 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) *****'*

8. Under Section 195 Cr.P.C, no Court can take cognizance of an offence punishable under the sections enumerated therein (including Section 188 IPC) except on a complaint in writing of the public servant. Section 195 Cr.P.C. has been held to be mandatory and contravention of which vitiates the entire trial being without jurisdiction and void ab initio. (Daulat Ram vs. State of Punjab, (1962) Supp. 2 SCR 812; State of U.P. vs. Mata Bhikh, (1994) 4 SCC 95; C. Muniappan vs. State of Tamil Nadu, (2010) 9 SCC 567; Saloni Arora vs. State (NCT of Delhi), 2017 3 SCC 286)

9. A complaint has been defined under Section 2(d) of Cr.P.C. as under:-

'2(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 an 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.'

10. Under Section 2(d) of Cr.P.C., a complaint is to be made to a Magistrate. In terms of explanation to Section 2(d) of Cr.P.C., a report by a police officer, which discloses commission of a non-cognizable offence, is also deemed to be a complaint under Section 2(d) of Cr.P.C. However, in the present case, the complaint i.e. the final report on which cognizance has been taken is a final report with regard to an offence under Section 188 IPC, which is a cognizable offence.

11. In the present case, neither does the subject complaint satisfy the requirements of Section 195(1)(a)(i) Cr.P.C. i.e., in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of Section 2(d) of Cr.P.C. i.e., a report of a police officer after investigation of commission of a non-cognizable offence.

12. The complaint made by the respondent No.2 on 19.02.2016 was a complaint made to the SHO and is not a complaint to the Magistrate so as to satisfy the requirements of Section 195(1)(a)(i) Cr.P.C.. The final report filed by the SHO is not a report of a Police Officer of commission of a non-cognizable offence so as to satisfy the requirements of Section 2(d) of Cr.P.C.

13. The alleged complaint does not satisfy the requirements of Section 195 Cr.P.C.

14. Non-compliance of Section 195 Cr.P.C. is a defect which cannot be cured subsequently as is sought to be done by the prosecution by filing a supplementary chargesheet or by way of a complaint given by the public servant after cognizance has been taken. 15. In similar circumstances, this Court in Saloni Arora vs. State of NCT of Delhi: 2015 SCC online Del 14460 had attempted to cure the defects of non-compliance of Section 195 Cr.P.C.. However, the Supreme Court in Saloni Arora vs. State (NCT of Delhi): 2017 (3) SCC 286 set aside the order of this Court and held that non-compliance of Section 195 Cr.P.C. renders the trial itself void ab initio.

16. As noticed above, subject complaint does not satisfy the requirements of Section 195 Cr.P.C. and, accordingly, the Trial Court could not have taken cognizance of the offence under Section 188 IPC either on the final report or on the supplementary chargesheet filed by the prosecution.

17. Since the subject proceedings suffer from infraction of Section 195 Cr.P.C., the impugned orders dated 09.12.2016 and 14.11.2017 cannot be sustained and, accordingly, the action

taken by the prosecution against the petitioner for the offence under Section 188 IPC is rendered void ab initio being against the dictum of the Supreme Court in Daulat Ram vs. State of Punjab (1962) Supp. 2 SCR 812. 18. Accordingly, the impugned orders dated 09.12.2016 and 14.11.2017 are quashed. Petition is allowed in the above terms. There shall be no order as to costs.

19. Order Dasti under signatures of the Court Master.