Sukhjit Singh And Anr vs State Of Punjab And Another on 20 February, 2025

Neutral Citation No:=2025:PHHC:026076

CRM-M No.7221 of 2025 1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.7221 of 2025 (O&M)
Pronounced on: 20.02.2025
Reserved on: 10.02.2025

Sukhjit Singh and another

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhwinder Singh Kamboj, Advocate
for the petitioners.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The petitioners have approached this Court by way of filing the present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') for quashing of the impugned FIR bearing No.106 dated 30.05.2020 under Sections 353, 186 and 34 of IPC registered at Police Station Sadar Ahmedgarh, District Malerkotla (Annexure P-5), as well as all subsequent proceedings arising therefrom including final report under Section 173 Cr.P.C. and charge-sheet dated 30.08.2022.

2. The facts of the present case, tersely put, are that the petitioners constructed an unauthorized shed within the limits of Municipal Council Ahmedgarh without obtaining the necessary sanction. Since the construction of the shed was illegal, therefore on 1 of 12 Neutral Citation No:=2025:PHHC:026076 04.09.2019, the operation to demolish the shed was initiated. However, in an attempt to obstruct the demolition work, the petitioners declared that if the operation continued, their entire family would die by suicide by consuming poison, and the officials carrying

out the demolition would be held responsible. Given that official work was disrupted by the death threats extended by the petitioners, a letter was written by the Joint Deputy Director, Municipal Council, Ahmedgarh to the SHO, P.S. Sadar Ahmedgarh for taking appropriate legal action against them. Resultantly, the FIR (supra) was registered against the petitioners.

3. The learned counsel for the petitioners contended that the registration of the FIR is an abuse of the process of law, given the bar imposed by Section 195(1) of the Cr.P.C. It was argued that the trial court failed to recognize its lack of jurisdiction to take cognizance of the offence punishable under Section 186 of the IPC, as Section 195(1) of the Cr.P.C. mandates that such cognizance can only be taken upon a criminal complaint filed by the concerned department before the Magistrate. Furthermore, while Section 186 of the IPC is expressly enumerated in Section 195(1) of the Cr.P.C., Section 353 is not. However, the bar under Section 195(1) would still apply, as per the settled legal principle that it extends to cases where offences forming part of the same transaction include any of the offences mentioned therein. Learned counsel relied upon Mahendra Kumar Sonker vs. The State of Madhya Pradesh, 2024 Cri. LR SC 958; Ram Kumar vs. The State of Haryana, 1998 (1) CLR 633 and Ramji BhikhaKoli and Ors.

2 of 12 Neutral Citation No:=2025:PHHC:026076 vs. State of Gujarat 1999 Cri.L.J, in this regard. Lastly, it was asserted that merely shouting at or threatening a person does not constitute criminal force or assault. Consequently, the essential ingredients required to invoke Section 353 of the IPC are absent in the present case.

4. Per contra, learned State Counsel submitted that on receipt of reliable information from the Joint Deputy Director, Municipal Council, Ahmedgarh, FIR (supra) was registered against the petitioners on 30.05.2020 and after the completion of the investigation, challan dated 26.04.2022 was presented against the petitioners before the learned Judicial Magistrate 1st Class, Malerkotla and subsequently charges under Sections 183, 354 and 34 of the IPC stood framed against them vide order dated 30.08.2022.Further, learned State counsel submitted that the bar under Section 195(1) of Cr.P.C. is merely directory in nature and not mandatory.

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, this Court would like to examine the necessary ingredients constituting the offences as defined under Sections186 and 353 of the IPC:

> "Section 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.
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> Section 353. Assault or criminal force to deter public servant from discharge of his duty.-Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that 3 of 12 Neutral Citation No:=2025:PHHC:026076 person from discharging his duty as such public servant, or in consequence of anything done or attempted to be

> done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

Further, the relevant portion of Section 195 of Cr.P.C. which prescribes that the Magistrates can take cognizance in respect of certain kinds of non-cognizable offences as mentioned in the said section, which includes Section 186 of the IPC, only after a written complaint is filed by the concerned public servant to the Magistrate, readsas follows:

> "Section 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.
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> (1) No Court shall take cognizance-
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> (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or
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> (ii) of any abetment of, or attempt to commit, such offence, or
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> (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;
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> xxx xxx xxx xxx"
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> 6. Since a bare perusal of Section 195 of Cr.P.C. clearly reveals that Section 186 of the IPC is governed by the former, it would be apposite to emphasize that the drill of Section 195 of the Cr.P.C. is mandatory in nature. This position is supported by the judgment of the Hon'ble Supreme Court's rendered in C. Muniappan& Others. v. State of Tamil Nadu, (2010) 9 SCC 567, wherein the following observations were made:
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> 4 of 12 Neutral Citation No:=2025:PHHC:026076 "20. Section 195(a)(i) Criminal Procedure Code bars the court from taking cognizance of any offence punishable under Section 188 Indian Penal Code or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant.

The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This

provision has been carved out as an exception to the general rule contained under Section 190 Criminal Procedure Code that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Criminal Procedure Code like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. The State of Bihar, AIR 1971 Supreme Court 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 Supreme Court 1935; Surjit Singh &Ors. v. Balbir Singh, 1996(3) RCR (Criminal) 240 : (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., 1998(1) RCR (Criminal) 576 : (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy &Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah &Anr. v. Meenakshi Marwah & Anr., 2005(2) RCR (Criminal) 178 : 2005(1) Apex Criminal 581).

21. The test of whether there is evasion or non-compliance of Section 195 Criminal Procedure Code or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir- ul-Haq & Ors. v. The State of West Bengal, AIR 1953 Supreme Court 293; and Durgacharan Naik &Ors. v. State of Orissa, AIR 1966 Supreme Court 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of 5 of 12 Neutral Citation No:=2025:PHHC:026076 Indian Penal Code, though in truth and substance, the offence falls in a category mentioned in Section 195 Criminal Procedure Code Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it.

22. In M.S. Ahlawat v. State of Haryana &Anr., 1999(4) RCR (Criminal) 718 , this Court considered the matter at length and held as under :

> "....Provisions of Section 195 Criminal Procedure 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." (Emphasis added)

23. In Sachida Nand Singh &Anr. v. State of Bihar &Anr., 1998(1) RCR (Criminal) 823 : (1998) 2 SCC 493, this Court while dealing with this issue observed as under :

> "7. ..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 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."

(Emphasis supplied)

24. In Daulat Ram v. State of Punjab, AIR 1962 Supreme Court 1206, this Court considered the nature of the provisions of Section 195 Criminal Procedure Code In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the concerned public servant, the Tahsildar had not filed any complaint. This Court held as under :

> "The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained. The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside."

6 of 12 Neutral Citation No:=2025:PHHC:026076 (Emphasis added)

25. Thus, in view of the above, the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 Criminal Procedure Code 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."

7. Section 195(1)(a)(i) of the Cr.P.C. specifies that no court shall take cognizance of any offence punishable under Sections 172 to 188 of the IPC unless a written complaint is made by the concerned public servant or another public servant to whom they are administratively subordinate. This provision serves as an explicit bar, stating that the court cannot take cognizance of a matter based on a Final Report under Section 173 of Cr.P.C. A complaint, as defined under Section 2(d) of the Cr.P.C., excludes a Police Report or Final Report. Thus, cognizance can only be taken on a written complaint filed in Court under Section 200 of the Cr.P.C. Further, Section 21 of the IPC defines "public servant" to include a municipal commissioner as well as any person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government. As a result, from the plain language of Section 195 of the Cr.P.C., it is clear that criminal prosecution under Sections 172 to 188 of the IPC can only be initiated through a written complaint filed by the concerned public servant or another public servant to whom they are administratively subordinate. (See: Pardeep Kumar vs. State of Punjab 7 of 12 Neutral Citation No:=2025:PHHC:026076 and Another, passed in CRM-M No.41656 of 2023, decided on 23.08.2023; Jarnail Singh @ Rana vs. State of Punjab, passed in CRM-M-48718-2019 decided on 17.04.2024 and Charanjit Singh @ Channi passed in CRM-M-453-2023 pronounced on 06.12.2023.

8. In the present case, the Joint Deputy Director, Municipal Council, Ahmedgarh, being a public servant as defined under Section 21 of the IPC, was required to follow the procedure prescribed by law if he intended to initiate proceedings against the petitioners for the offence under Section 186 of the IPC. The proper course of action would have been to file a written complaint before the competent jurisdictional court. However, instead of adhering to this legal requirement, the Joint Deputy Director merely forwarded a letter to the local police, directing them to take appropriate

legal action on the basis of the complaint, which effectively led to the registration of the impugned FIR. Given the mandatory nature and scope of Section 195 of the Cr.P.C., such an approach is in clear violation of its provisions. Consequently, the resulting FIR under Section 186 of the IPC stands contrary to the procedural safeguards enshrined in Section 195 of Cr.P.C.

9. Adverting to the contention of the learned counsel for the petitioners that the bar under Section 195(1) of Cr.P.C. would also be applicable to Section 353 of the IPC, since it also extends to cases where offences forming part of the same transaction include any of the offences enumerated therein, it would be germane to specify that Sections 186 and 353 of the IPC relate to two distinct offences , having 8 of 12 Neutral Citation No:=2025:PHHC:026076 disparate ingredients. On the one hand Section 353 of the IPC is a cognizable offence, on the other hand Section 186 of the IPC is not. Section 195 of Cr.P.C. does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section. Therefore, this averment cannot be countenanced by this Court. The judgments relied upon by the learned counsel for the petitioners i.e. Ram Kumar(supra)and Ramji BhikhaKoli(supra)would not be of any assistance in view of the authoritative judgment rendered by the Hon'ble Supreme Court in Durgacharan Naik and others vs. State of Orissa, AIR 1966 (SC) 1775 wherein the following the opined:

> "5. We pass on to consider the next contention of the appellants that the conviction of the appellants under Section 353 Indian Penal Code is illegal because there is a contravention of Section 195 (1) of the Criminal Procedure Code which requires a complaint in writing by the process server or the A. S. I. It was submitted that the charge under Section 353 Indian Penal Code is based upon the same facts as the charge under Section 186 Indian Penal Code and no cognizance could be taken of the offence under Section 186 Indian Penal Code unless there was a complaint in writing as required by Section 195 (1) of the Criminal Procedure Code It was argued that the conviction under Section 353 Indian Penal Code is tantamount, in the circumstances of this case, to a circumvention of the requirement of Section 195 (1) of the Criminal Procedure Code and the conviction of the appellants under Section 353 Indian Penal Code by the High Court was, therefore, vitiated in law. We are unable to accept this argument as correct. It is true that most of the allegations in this case upon which the charge under Section 353 Indian Penal Code is based are the same as those constituting the charge under Section 186 Indian Penal Code but it cannot be ignored that Sections 186 and 353, Indian Penal Code relate to two distinct offences and while the offence under the latter section is a cognizable offence the one under the former

9 of 12 Neutral Citation No:=2025:PHHC:026076 section is not so. The ingredients of the two offences are also distinct. Section 186 Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under Section 353. Indian Penal Code the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the Indian Penal Code dealing with Contempts of the lawful authority of public servants, while Section 353 occurs in Ch. XVI regarding the Offences affecting the human body. It is well established that Section 195 of the Criminal Procedure Code does not bar the trial of an accused

person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section. In Satis Chandra Chakravarti v. Ram Dayal De, 24 Cal WN 982, it was held by Full Bench of the Calcutta High Court that where the maker of a single statement is guilty of two distinct offences, one under Section 211 Indian Penal Code, which is an offence against public justice, and the other an offence under Section 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the Court concerned, as the Criminal Procedure Code has not provided for sanction of Court for taking cognizance of that offence. It was said that the two offences being fundamentally distinct in nature, could be separately taken cognizance of. That they are distinct in character is patent from the fact that the former is made non-compoundable, while the latter remains compoundable; in one for the initiation of the proceedings the legislature requires the sanction of the Court under Section 195, Criminal Procedure Code, while in the other, cognizance can be taken of the offence on the complaint of the person defamed. It is pointed out in the Full Bench case that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of Sections 195 to 199 of the Criminal Procedure Code The decision of the Calcutta case has been quoted with approval by this Court in Basirul-Huq v. State of West Bengal, 1953 SCR 836, in which it was held that if the allegations made in a false report disclose two distinct offences, one against a public servant and the other 10 of 12 Neutral Citation No:=2025:PHHC:026076 against a private individual, the latter is not debarred by the provisions of Section 195, Criminal Procedure Code, from seeking redress for the offence committed against him."

This reasoning was further buttressed and approved by the Hon'ble Supreme Court in Pankaj Aggarwal and Others vs. State of Delhi and Another, JT 2001 (5) S.C. 233.

10. Coming to the next consideration as to whether the ingredients of Section 353 of the IPC are satisfied in the present case, it is pertinent to establish that the offending act qualifies either as an assault or criminal force meant to deter public servant from discharge of his duty. Unlike in the case of Section 186 of the IPC where voluntarily obstructing any public servant in discharge of his official function is sufficient to invoke the said section, in the case of offence under Section 353 of the IPC as mentioned above, not only obstruction but actual use of criminal force or assault on the public servant is necessary. In the instant case, the only allegation qua the petitioners is that they declared that if the demolition operation continued, their entire family would die by suicide by consuming poison. Threat to die by suicide can by no means come under the ambit of use of criminal force or assault. As such the ingredients of offence under Section 353 of the IPC are clearly absent in the FIR(supra).

11. In view of the discussion above, the present petition is allowed and FIR bearing no. 106 dated 30.05.2020 under Sections 353, 186 and 34 of IPC registered at Police Station Sadar Ahmedgarh, 11 of 12 Neutral Citation No:=2025:PHHC:026076 District Malerkotla and all subsequent proceedings arising therefrom are quashed qua the petitioners.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

20.02.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No