

**In the Court of Ms. Navreet Kaur, PCS, Judicial Magistrate
1st Class, Garhshankar**

CIS No. CHI/271/2021
Date of decision: 12.01.2022

State Vs. Dilawar Singh son of Avtar Singh, resident of
Village Saila Kalan, PS Mahilpur, District
Hoshiarpur.

....Accused.

FIR No. : 234 dated 03.12.2020
Under section : 188, 269, 270 IPC
Police Station : Mahilpur, Hoshiarpur.

Present: Ms. Shikha, Ld. APP for the State,
Accused Dilawar Singh on bail with counsel AS Bhullar,
Advocate.

JUDGMENT:

1. The station house officer, Police Station Mahilpur, Hoshiarpur, has sent up accused to face trial for commission of offence punishable under section 188, 269, 270 IPC.

2. Brief facts of the case are that on 03.12.2020 ASI Hargopal along with other police officials, on their private vehicle, were on curfew duty and were going from village Saila Khurd to Saila Kalan, then one person was seen coming from front side. On seeing, police party stopped him and asked his name and whereabouts. He told his name as Dilawar Singh son of Avtar Singh. ASI disclosed to him that Deputy Commissioner had passed an order not to roam during curfew hours and also directed to wear the mask during Covid-19. Accused could not produce the curfew pass.

So he had violated the order of the Ld. District Magistrate regarding curfew. On this, finding this act of accused as disobedience of the order of Deputy Commissioner, which amount to an offence under Section 188 of IPC. Ruqa was sent for registration of FIR. FIR was registered. Investigation was started. Spot was inspected. Site plan was prepared. Accused was arrested. His personal search was conducted. Motorcycle was taken into police possession. Statement of witnesses were recorded. During investigation, offence under Section 269 and 270 IPC was added. After completion of investigation, challan against the accused was presented in the Court for judicial verdict.

3. On presentation of challan in the court, copies of documents relied upon by the prosecution was supplied to the accused free of costs as required u/s 207 Cr.P.C.

4. After hearing Ld. APP for the State and Ld. Defence Counsel, prima facie accused committed offence punishable u/s 188, 269, 270 of IPC and the charge against the accused was framed to which he pleaded not guilty and claimed for trial.

5. To prove its case the prosecution examined PW1 Jaimeet Singh, Clerk and PW2 HC Jaspal Singh and thereafter, the Ld. APP for the State closed the prosecution evidence.

6. After closure of prosecution evidence, statement of accused u/s 313 Cr.PC has been recorded in which all the incriminating material available in the statements of the witnesses of the prosecution was confronted to the accused to which he denied for the same but pleaded lenient view and in defence accused did not opt to lead any evidence.

7. From the facts of present case, the following point of determination arose.

1. Whether accused knowing the order promulgated by Deputy Commissioner, Hoshiarpur lawfully empowered to promulgate such order, has violated the same by roaming outside during lock down without curfew pass and without wearing mask?
2. Whether accused negligently roam out side during lock down without wearing mask which is likely to spread the infection i.e., Covid-19, dangerous to life?
3. Whether the accused malignantly roam outside during lock down without wearing mask which is likely to spread the infection having knowledge of the same to be dangerous to life?

8. The accused denied from the point of determination whereas Ld. APP affirmed the same by striking into prosecution version. Ld. APP further argued that PW2 is HC Jaspal Singh who is witness of memos and PW1 is Jaimeet Singh, Clerk of SDM Office. Both these witnesses deposed against the accused and proved whole of the incident and further proved on record authority letter as Ex. PW2/A, certified copy of curfew order Ex. PW2/B, ruqa Ex. P1, FIR Ex. P2, endorsement on ruqa Ex. P3, rough site plan Ex. P4, arrest memo Ex. P5, personal search memo Ex. P6 and DDR as Ex. P7. With these submissions Ld. APP for the State prayed that the prosecution has proved its case, hence prayed for conviction of the accused.

9. On the other hand Ld. Counsel for the accused has argued that a false case has been foisted upon the accused and accused has been falsely implicated in this case. Ld. counsel for the accused has further argued that lenient view be taken against accused.

10. I have heard Ld. counsel for accused and Ld. APP for the state and have gone through the file carefully. After going through the arguments and judicial file, this court is of the considered view that the prosecution has succeeded in proving the guilt of the accused beyond any shadow of doubt.

11. Prosecution to prove the offence against the accused has to prove on record two things firstly that a curfew order was passed by the Deputy Commissioner and that accused has violated the terms of said curfew order. To prove the same, prosecution has examined ASI HC Jaspal Singh, witness of memos of the case as PW2, who has proved on record Ruqa Ex. P1, FIR Ex. P2, endorsement on ruqa Ex. P3, rough site plan Ex. P4, arrest memo Ex. P5 and personal search memo Ex. P6 and DDR Ex. P7. Prosecution has further examined Mr. Jaimeet Singh, Clerk of SDM Office who has proved on record authority letter Ex. PW2/A, certified copy of curfew order Ex. PW2/B.

12. By examining both these witnesses, prosecution has duly proved on record that curfew order was passed by the Deputy Commissioner and that accused has violated and disobeyed the same as they were roaming outside during the curfew without wearing mask and without the curfew pass for which the complaint was moved by Deputy Commissioner. Prosecution has further proved that accused was roaming outside without mask, having knowledge that it may spread infection, dangerous to life. During cross examination of all these witnesses nothing has come out of their mouth which can dent the story of prosecution. As such, guilt of the accused are proved beyond shadow of doubt.

13. Counsel for accused has argued that certain relaxation was given during curfew for medical emergency. During the cross

examination of PW1 except this suggestion that relaxation was given by Deputy Commissioner during the curfew on the ground of medical emergency, counsel for accused put no question to him. But counsel for accused has failed to prove any such medical emergency on record due to which the accused was roaming outside during curfew. So, this arguments of counsel of accused can't help the accused.

14. The only thing which the prosecution has failed to prove on record is the sanction under Section 195 Cr.P.C. which is necessary to prosecute accused under Section 188 IPC. Perusal of the file shows that accused has not cross examined witness PW2 meaning thereby, accused has admitted all the facts claimed by him. Further in statement under Section 313 of accused, he has indirectly admitted the fact of commission of offence by him when he said lenient view be taken against him. So it is proved on record the accused has committed an offence under all the section with which he charged.

15. Therefore, from what has been discussed above. The prosecution has succeeded in proving the guilt of the accused beyond reasonable shadow of doubt under section 188, 269, 270 of IPC. The accused is held guilty under Section 188, 269, 270 of IPC and he is convicted thereunder. Let he be taken into custody and be heard on the quantum of sentence.

Pronounced in open court
12.01.2021
Steno, Sunita Chauhan

(Navreet Kaur)
Judicial Magistrate Ist Class,
Garhshankar

QUANTUM OF SENTENCE

Present: Ms. Shikha, Ld. APP for the State,
Convict Dilawar Singh with counsel AS Bhullar, Advocate.

1. Ld. Counsel for the convict argued the he is poor person as he is the only person who was doing work for the livelihood of the family. So he prayed for lenient view against the convict and further prayed for giving the benefits of probation to him.

2. On the other hand Ld. APP for the state by refusing the arguments of the defence counsel submits that the convict had committed offence under Section 188, 269, 270 of IPC. As such, he is not entitled to get benefit of probation.

3. After hearing both the sides I am of the view that the convict has committed serious offence therefore, benefits of probation can not be granted to him. Keeping in view the circumstances and taking lenient view to some extent, the accused is sentenced to pay fine of Rs. 500/- in each Section i.e., 188, 269, 270 of IPC i.e., total Rs. 1500/- and in default of payment of fine he is to under go simple imprisonment for the period of seven days. Fine paid. Case property be disposed of after the expiry of the period of the preferring the appeal or revision, if any. File be consigned to the record room.

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Steno, Sunita Chauhan

(Navreet Kaur)
Judicial Magistrate Ist Class,
Garhshankar