

**IN THE COURT OF SIMRANDEEP SINGH SOHI, PCS,
JUDICIAL MAGISTRATE IST CLASS, HOSHIARPUR (UID
No.PB0 550)**

CIS Regd. No. CHI-278-2021
CNR No. PBHO03-000864-2021
Instituted on: 23-03-2021
Decided on: 01.04.2022

State

Vs

Surinder Pal son of Atma Ram r/o Ward No.6, Sham Chaurasi, P.S.
Bullowal, District Hoshiarpur. -----Accused.

F.I.R No: 64 dated 25.04.2022
U/s 188 of IPC
P.S. Mehtiana

Present: Sh. Nitin Berry Ld. APP for the State
Accused on bail with counsel Sh. TS Kang, Adv

JUDGMENT:

The above named accused has been forwarded to face trial by SHO, police station Mehtiana, for alleged commission of offences punishable under section 188 IPC (*hereinafter referred to as 'Act'*).

2. Prosecution version as unfolds from final report under section 173 Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) is that on 25.04.2020 before 2.00 P.M in the area of Ward No.6 Sham Chaurasi, accused Surinder Pal was found constructing his house during imposition of curfew without having any curfew pass or any dire necessity and disobeyed the directions issued by Deputy Commissioner, Hoshiarpur bearing order No. 3513/MA dated 23.03.2020. The accused could not give any satisfactory answer nor any produced any curfew pass or permit. Finding a prima facie case against the accused ASI scribed rukka and sent for registration of FIR. FIR was registered. Accused was arrested. Site plan was prepared. Statement of witnesses were recorded.

Investigation was conducted and after completion of investigation challan was presented against the accused u/s 188 IPC. Compliance of provisions of section 207 Cr.PC was made. Finding a *prima facie* case, charge against accused under sections 188 IPC was framed, to which accused pleaded not guilty and claimed trial.

3. In order to bring home the guilt of accused under above said section, prosecution examined Sahil Mehta as PW-1, who proved on record order No.3513-MC3/MA dated 23.3.2020 as Ex.PW1/A, order No. 3656 dated 14.04.2020 issued by DM Apneet Rayat as Ex.PW1/B and complaint Under S. 195 CrPC Ex.PW1/C. Thereafter prosecution examined complainant ASI Gurdeep Singh as PW2 and he proved on record ruqa Ex.PW2/A, FIR Ex.PW2/B, site plan Ex.PW2/B1, arrest memo of accused Ex.PW2/C. However, prosecution failed to adduce its remaining evidence despite availing sufficient opportunities and accordingly prosecution evidence was closed by order.

4. On conclusion of prosecution evidence, statement of accused was recorded under section 313 Cr.P.C., wherein all the incriminating circumstances were put to accused to which accused pleaded that he is innocent and has been falsely implicated. The accused opted to lead evidence in his defence but did not examine any witness and later on closed his defence evidence.

5. On the strength of evidence stated above learned APP has submitted that it is duly proved on record that accused have violated the orders of deputy commissioner. Accordingly, he has submitted that charges against the accused under section 188 IPC who have been

identified in court have been duly proved and accused may be convicted for commission of offence u/s 188 IPC.

6. On the other hand learned defence counsel has contended that there are material contradictions in the testimony of PW1 and PW2. It has been submitted that no independent witness has been examined. It is further submitted that the only witnesses examined by prosecution are interested witnesses being responsible for prosecution of accused and accused cannot be held liable on basis of testimony of such interested witness. Accordingly, acquittal of the accused has been prayed for.

7. I have heard and thoughtfully considered the submissions made by learned APP and defence counsel and carefully perused the judicial file, where from, following point arise for determination;

I. Whether the offence under section 188 IPC with which accused has been charged is made out or not?

8. The prosecution version is that in order to make compliance with the order of District Magistrate imposing curfew in District Hoshiarpur vide order dated 3513-MC3/MA dated 23.3.2020. The accused was constructing his house during curfew period without any curfew pass and thus disobeyed the directions issued by Deputy Commissioner, Hoshiarpur bearing order No. 3513/MA dated 23.03.2020. The accused could not give any satisfactory answer nor any produced any curfew pass or permit. To prove the prosecution story PW1 Sahil Mehta clerk MA Branch and stated that he proved on record order no. 3513/MC3/MA dated 23.3.2020 passed by the Worthy District Magistrate as Ex.PW1/A. He also proved order No. 3656 dated

14.04.2020 issued by DM Apneet Rayat as Ex.PW1/B and complaint Under S. 195 CrPC made by Worthy District Magistrate and the same is Ex.PW1/C over which He identified the signature of Worthy District Magistrate Hoshiarpur. He remained working under the Worthy District Magistrate Hoshiarpur and seen the official correspondence and he identified his signature. PW1 in his cross examination deposed that he has no personal knowledge about the case.

Thereafter prosecution examined ASI Gurdeep Singh No. 925/HPR posted at PP Sham Chaurasi appeared as PW2 and he deposed that on 25.04.2020 he alongwith other police officials were on corona duty due to order No. 3513-MC3/MA dated 23.3.2020 and order no. 3656 dated 14.04.2020 in which curfew was imposed and they were present at Ward NO.6, Sham Chaurasi and information was received that accused Surinder Pal was constructing his house violating curfew order. After which the police party reached there and accused was arrested. He proved on record ruqa Ex.PW2/A, FIR Ex.PW2/B, site plan Ex.PW2/B1, arrest memo of accused Ex.PW2/C. PW2 in his cross examination deposed that accused was standing outside his own house as the wall of his house was broken and he was affixing the same. He denied that he violated the curfew order.

9. Merely the witnesses examined in the case are official witnesses, their testimony cannot be discarded. No material has been brought on record to show that witnesses were inimical towards the accused or they had some other reason to falsely implicate the accused. Similarly, non examination of independent witness also does not effect

the prosecution case. It has been observed by Hon'ble Supreme Court in ***Appabhai and Anr. v. State of Gujrat*** AIR 1988 SC 696 that prosecution case cannot be thrown out only on the ground of non joining of independent witness as civilized people are generally insensitive when a crime is committed even in their presence. The court, therefore, instead of doubting the prosecution case for want of independent witness must consider the broad spectrum of the prosecution version and then search for the nugget of truth with due regard to probability if any, suggested by the accused.

10. The testimony of PW1 and PW2 is credible and reliable and proves beyond shadow of all doubts that accused was constructing his house without having any license or permit or any other necessity in violation of order of deputy commissioner, which order has been proved on record. The ingredients of offence punishable under section 188 IPC thus stands fulfilled. Hence, accused Surinder Pal is convicted for commission of offence under section 188 of the Act.

The convict be taken in custody and be produced at 2:30 PM for hearing on quantum of sentence

Pronounced in open Court on this;
1st day of April 2022

(Simrandeep Singh Sohi), PCS
Judicial Magistrate Ist Class,
Hoshiarpur (UID-PB0 550)

Order of Sentence

Present: Sh. Nitin Berry, APP for the State.
Convict with counsel

Surinder Pal has been convicted for commission of offence punishable under section 188 IPC. However learned counsel for the

convict prays that convict is the first offender and only bread winner of his family. Accordingly, a prayer has been to release him on probation. On the other hand, learned APP has submitted that offence committed by accused involves serious social implications. He has submitted that maximum punishment may be awarded to convict.

While passing an order for sentence, Court has also to consider the circumstances of the convicts and a balanced approach has to be taken, which justifies the sentence imposed in view of act done and consequences that ensued. Accordingly, in the facts and circumstances of this case, this court deems it appropriate to sentence the accused to fine of Rupees Two Thousand (Rs.2000/-). Ordered accordingly. Fine paid against proper receipt. Earlier bail bonds and surety bonds of convict stand discharged. The case file be consigned to the Record Room, Hoshiarpur.

Pronounced in open Court on this;
1st day of April 2022

vikas

(Simrandeep Singh Sohi), PCS
Judicial Magistrate Ist Class,
Hoshiarpur (UID-PB0 550)

State Vs. Surinder Pal

Present: Sh. Nitin Berry Ld. APP for the State
Accused on bail with counsel Sh. TS Kang, Adv

PW2 ASI Gurdeep Singh present and examined. No other evidence of prosecution has come present despite sufficient opportunities. No plausible ground is made out for grant yet another adjournment for evidence of prosecution. Hence the remaining evidence of prosecution is hereby closed by order. Statement of accused Under S. 313 CrPC recorded. Accused closed his defence evidence. Arguments heard. Vide separate detailed judgment of even date, the accused has been convicted. Fine deposited by the accused. File be consigned to record room.

Pronounced in open Court on this;
1st day of April 2022

vikas

(Simrandeep Singh Sohi), PCS
Judicial Magistrate Ist Class,
Hoshiarpur (UID-PB0 550)