

IN THE COURT OF PARINDER SINGH, PCS, ADDITIONAL
CHIEF JUDICIAL MAGISTRATE, PATHANKOT.

PBPO030048062021



Case Type	IPC Challan No.204/2021
Date of Institution	14.12.2021
Date of Registration	14.12.2021
CIS No.	CHI/1156/2021
CNR No.	PBPO030048062021
UID No.	PB0247
Decided on	08.03.2022

State	Versus	Honey son of Ramesh Kumar resident of Khanpur, Sujanpur Road, Pathankot.Accused.
-------	--------	--

FIR No.33 dated 03.04.2020
Under Section 188 Indian Penal Code.
Police Station Division No.1, Pathankot.

Present: Sh.Arun Kumar Ld.Addl.Public Prosecutor for the State.
Accused on bail with counsel Sh.Munish Kumar Anand
Advocate.

JUDGMENT

1. Instant case has been registered on the basis of police report presented by Station House Officer of Police Station, Division No.1, Pathankot against the above named accused for having violated the order promulgated by public servant under Section 144 of Criminal Procedure Code.

2. Perusal of the police report reveals that when on 03.04.2020 ASI Nirmal Singh alongwith other police officials was patrolling to ensure compliance of instructions regarding curfew, he noticed one person without wearing mask. Said person was standing at Khanpur Chowk, Pathankot and introduced himself as Honey. He could not produce any permission for coming out of his house during curfew. On finding violation of order of District Magistrate, Pathankot dated 23.03.2020, commission of offence punishable under Section 188 of Indian Penal Code was found to have been committed. Formal First Information Report was got registered against the accused and accused was joined in investigation. After completion of investigation police report was presented in court.

3. On appearance in Court, copies of police report alongwith other documents accompanying the same were supplied to accused free of costs in compliance of Section 207 of Criminal Procedure Code.

4. After hearing the submissions of Learned Additional Public Prosecutor for the State and learned defence counsel and having gone through the record, the Court being of the opinion that there was sufficient material on record to presume that accused had committed offence punishable under Section 188 of Indian Penal Code, charged the accused accordingly, to which he pleaded not guilty and claimed trial.

5. In order to bring home the guilt of accused, prosecution

examined following witnesses:-

1. Munish Kumar, Clerk office of Deputy Commissioner as PW1 and
2. ASI Nirmal Singh, Investigating Officer as PW2 .

6. After closure of prosecution evidence, statement of accused was recorded under Section 313 of Criminal Procedure Code wherein all the incriminating evidence appearing on file was put to him to which he replied to be incorrect and pleaded false implication.

7. Accused opted to lead evidence in defence but did not examine any witness.

8. Rival submissions of learned Additional Public Prosecutor for the State and learned defence counsel have been heard.

Arguments of Prosecution

9. Learned Additional Public Prosecutor for the State opened his arguments with the submission that in view of outbreak and spread of Pandemic Corona-Virus-19, District Magistrate, Pathankot using his powers under Section 144 Criminal Procedure Code, passed directions that no person shall remain outdoor on any street, road or public place during curfew hours. Accused facing trial violated those orders by remaining outdoor on 03.04.2020 during curfew hours and was apprehended by Investigating Officer PW2 ASI Nirmal Singh who was patrolling so as to ensure compliance of

said order. In this regard Learned Additional Public Prosecutor for the State referred to the statement of PW2 ASI Nirmal Singh and argued that from the statement of this witness not only commission of offence has been proved but also conducting of fair and thorough investigation has been established.

10. PW2 ASI Nirmal Singh, Investigating Officer proved following relevant memos which were prepared during his investigation and witnessed by Constable Karandeep Singh:-

1. Arrest memo of accused Ex.P3,
2. Ruqa Ex.P4,
3. First Information Report Ex.P5 and
4. Site plan Ex.P6.

11. Reliance has also been placed on the statement of PW1 Munish Kumar, Clerk Deputy Commissioner Office, Pathankot who has proved the order of curfew Ex.P1 and formal complaint under Section 195 Criminal Procedure Code Ex.P2.

12. Thus, learned Additional Public Prosecutor for the State concluded his arguments with the prayer that since the prosecution has duly proved the guilt of accused, the accused may kindly be convicted for the offence charged with.

Arguments of Defence

13. On the other hand, learned defence counsel argued that accused has been falsely implicated in the present case as neither he committed any breach of any such order nor remained outdoor as

alleged by prosecution. A false case has been registered by police just in order to show strict compliance of orders of curfew.

14. Non-joining of independent witness by the police has also made a ground to create doubt in the case of prosecution and in this regard it has been argued that police could have easily joined independent witnesses before arrest of accused but intentionally no effort was made in this regard as police was to implicate the accused in false case.

15. Referring to the provisions of Section 195 Criminal Procedure Code learned defence counsel argued that the police was having no jurisdiction to lodge First Information Report and present police report as in view of said provision the District Magistrate was required to file a complaint in the Court. Thus, accused cannot be convicted in the present case registered on the basis of police investigation.

16. Thus, learned defence counsel concluded his arguments with the prayer that since prosecution has failed to bring home the guilt of accused, the accused may kindly be acquitted of the charge framed against him.

17. Rival submissions of learned Additional Public Prosecutor for the State and learned defence counsel have been considered and record has been perused.

Findings

18. Starting discussion with the objection regarding non

maintainability of present police report, this court would like to refer to the Schedule I of the Criminal Procedure Code which provides which offences are cognizable and which are not. Perusal of said schedule reveals that offence punishable under Section 188 of Indian Penal Code is Cognizable which means in view of Section 154 and 156 of Criminal Procedure Code, the police can investigate the matter without getting permission/orders of Magistrate. Thus, in the present case on violation of order promulgated by District Collector and on finding commission of offence punishable under Section 188 of Indian Penal Code, the police was justified in registering formal First Information Report and investigating the matter. In view of the provisions of Section 195 of the Code, the court can take cognizance of such an offence only on receipt of formal complaint of the public servant concerned. Thus, from the provisions of Criminal Procedure Code, it is abundant clear that police could register First Information Report and investigate the matter but court could take cognizance only on complaint of concerned Public Servant.

19. Coming to the facts of the case in hand, this court is of the considered opinion that said requirement regarding filing of formal complaint has not been complied with in letter and spirit. The matter was rightly investigated by police but final report(complaint) should have been filed by the concerned public servant. However, in the case in hand said report(police report) was presented by Investigating agency. The court can also not ignore the fact that even

formal complaint Ex.P2 moved by said Public Servant has been brought on record by police. Said complaint is addressed to the court with a request to exempt his personal appearance in view of exigencies of his office with undertaking that on his behalf Government Pleader would appear in court. Thus, the requirement of section 195 Criminal Procedure Code have been complied with though not in letter and spirit. The court cannot acquit/discharge the accused at this final stage of arguments on this technical ground as same would cause inconvenience to the accused in again facing trial on the basis of fresh complaint to be filed by Public Servant. Moreover, such an objection could be entertained only at the stage when court was about to take cognizance i.e. framing of charge and not at a stage when after having taken cognizance court proceeds to finally decide the case. As observed by Hon'ble Apex Court in the case law of C.Muniappan and others vs. State of Tamil Naidu¹, *"The legislative intention 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 criminal courts being wasted by endless prosecutions."* the purpose of the provision is also to avoid frivolous prosecutions. Since in the case in hand, the public servant had himself looked into the matter and thereafter moved formal complaint against the accused, presence prosecution cannot be said to be frivolous or instituted without knowledge of the Public

1 (2010) 9 Supreme Court Cases 567 Supreme Court

Servant.

20. In view of above discussion, this Court is of the considered opinion that the objection regarding non compliance of provisions of Section 195 Criminal Procedure Code, cannot be given much weightage. Coming to the merits of the case, this court is of the considered opinion that prosecution appears to have duly proved the guilt of accused by examining Investigating Officer ASI Nirmal Singh as PW-2 who apprehended the accused when he was violating the order of the Public Servant i.e. Ex.P1. Despite lengthy cross-examination accused failed to extract anything so as to create doubt in his version.

21. Question of joining of independent witness before arrest of accused, does not arise as during the period accused was apprehended there was curfew and thus, no person from locality would have been on roads. Considering the circumstances which existed during that period(taking judicial notice), it could also not be expected from the police to call independent witnesses from their houses. Even otherwise, there was no such legal requirement of joining independent witness.

22. The defence plea that accused was falsely implicated just in order to show the strict compliance of orders, is not only vague but has also not been substantiated from record as neither accused opted to lead any evidence in defence nor could establish the same from the cross-examination of prosecution witnesses. There

being neither any rule of law nor of prudence that uncorroborated statements of police officials should not be relied, the court can safely hold the accused guilty on the basis of this official witness.

23. Passing of order dated 23.03.2020 Ex.P1 by District Magistrate, Pathankot directing no person shall remain outdoor on any street, road or public place, has been duly proved by PW-1 Munish Kumar, Clerk who identified the signatures of District Magistrate on said orders. Even otherwise, the passing of said order has not been disputed by the accused. Though accused disputed proper publicity of said order but his objection is not acceptable as during those days such like instructions were wide publicity through text messages, all the news channels, newspapers etc. and the court can even take judicial notice of said fact.

24. In view of above discussion, this court is of the considered opinion that prosecution has duly proved the guilt of accused for having committed the offence punishable under Section 188 of Indian Penal Code. Let the convict be taken into custody and heard on question of Sentence.

**Pronounced in open Court,
Dated:08.03.2022**

**(Parinder Singh), PCS
Addl. Chief Judicial Magistrate,
Pathankot. UID No.PB0247**

(Balbir Singh Stenographer)

Question of Sentence

Present: Sh. Arun Kumar, Learned Addl. Public Prosecutor
for the State
Convict in custody along-with Sh.Munish Kumar Anand
Advocate

1. Submissions of learned Additional Additional Public
Prosecutor for the State and learned defence counsel and convict
heard on the question of sentence. The convict has urged that he is
the first offender and is only bread earner of his family and as such
lenient view be taken.

2. On the other hand, learned Addl. Public Prosecutor for the
State has opposed the averments of the counsel for the accused that
the convict be dealt severally so that it be a lesson to the like minded
people.

3. Considering the submissions of learned counsel for the
convict and learned Additional Public Prosecutor for the State and
other circumstances, this Court deem it fit that the convict does not
deserve any undue leniency. Undue sympathy to impose inadequate
sentence will undermine public confidence in efficacy of law and it
is duty of the Court to award proper sentence having regard to the
nature of the offence. Undue sympathy to impose inadequate
sentence would do more harm to the justice system to undermine the
public confidence in the efficacy of law and society could not long
endure under such serious threats. Resultantly, the convict is
sentenced as under:-

Offence under Section/s	Sentence Awarded
188 of Indian Penal Code	To pay fine of Rs.200/. In default of payment of fine to undergo Simple Imprisonment for a period of 3 days.

A copy of this judgment and sentence order be supplied to the convict free of cost. Case property, if any, be disposed off as per rules after the expiry of period of Appeal/Revision or subject to result of Appeal/Revision. Fine paid. File be consigned to the record room.

Pronounced in open Court.
Dated: 08.03.2022

(Parinder Singh),PCS
Addl. Chief Judicial Magistrate,
Pathankot. UID/PB0247

(Balbir Singh Stenographer)

(I attest to the accuracy and authenticity of this document).