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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 7412/2024 and CRL.M.A. 28295/2024

SHAURYA KOHLI

.....Petitioner

Through: Mr. Ashish Dholakia, Senior Advocate with Mr. Akash Panwar, Ms. Ananya Narain Tyagi and Mr. Harshit Joshi, Advocates with petitioner in-person.

versus

STATE OF N.C.T. OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for the State with SI Rohit, P.S.: Vasant Kunj, North.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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19.09.2024

CRL.M.A. 28296/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 7412/2024

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS'), the petitioner impugns order dated 19.04.2022, whereby the learned Magistrate has taken "*cognizance of offence mentioned in charge-sheet*" filed against the accused.

2. Briefly, the matter arises from an incident of 19.05.2020, when during the then prevailing pandemic, the petitioner is stated to have disobeyed Prohibitory Order No.1272-98/SO/ACP/VK dated



18.05.2020 promulgated by the ACP, Vasant Kunj, Delhi *inter-alia* mandating the wearing of a mask in a public place. The essence of the allegation is that the petitioner had violated the said prohibitory order by venturing into a public place without wearing a mask on his face; which amounted to an offence under section 188 of the Indian Penal Code, 1860 ('IPC').

3. Mr. Ashish Dholakia, learned senior counsel appearing for the petitioner submits, that an offence under section 188 IPC is covered by the provisions of section 195 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), which mandates that no court shall take cognizance of an offence *inter-alia* under section 188 IPC except on a complaint in writing made by the concerned public servant, as detailed in the provision.
4. Mr. Dholakia argues, that as is evident from a bare perusal of the impugned order, the learned Magistrate has taken cognizance of the alleged offence *not* on the basis of a written complainant made by the concerned public servant as required under section 195 Cr.P.C.; but on the basis of a chargesheet filed by the police, which vitiates the cognizance so taken.
5. In support of his submission, Mr. Dholakia places reliance on the judgment of a Co-ordinate Bench of this court in ***Pawan Kumar Aggarwal vs. Government of NCT of Delhi***¹, in which the Co-ordinate Bench has held that a party cannot be prosecuted for an offence covered within section 195 Cr.P.C., unless cognizance is

¹ 2012 SCC OnLine Del 40



taken on the basis of a written complaint made by the concerned public servant or some other public servant to whom he is administratively subordinate.

6. Learned senior counsel fairly points-out, that a complaint purportedly dated 26.06.2020 *has been appended* to the chargesheet filed but no such complaint was filed before the learned Magistrate prior to the filing of the chargesheet, which is the requirement of the law.
7. Other things apart, Mr. Dholakia submits, that it be noticed that the Prohibitory Order in question was issued on 18.05.2020, *i.e.* only one day before the petitioner was allegedly found violating it. Learned senior counsel further submits that there is nothing on record to show that the Prohibitory Order was published or publicised sufficiently for the petitioner to have been aware about it.
8. Mr. Dholakia also submits that impugned order dated 19.04.2020 is also vitiated since it is evidently a non-reasoned order; discloses no application of mind; and does not even say as to which offence the learned Magistrate is taking cognizance of.
9. Issue notice.
10. Mr. Utkarsh, learned APP appears for the State on advance copy; accepts notice; and seeks time to file status report.
11. Let status report be filed within 06 weeks; response thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.
12. Mr. Dholakia submits that the matter is now posted on 28.09.2024 for further proceedings before the learned Magistrate.
13. In view of the submissions made, and based on what is apparent from the record, further proceedings in case FIR No.225/2020 dated



19.05.2020 registered under sections 188/269 IPC at P.S.: Vasant Kunj, Delhi, pending before the learned Magistrate are stayed, till the next date of hearing before this court.

14. Re-notify on 18th December 2024.

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 19, 2024/ak