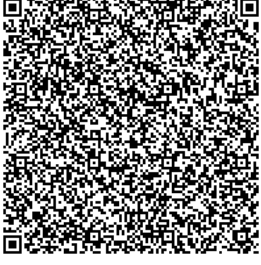


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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.912 OF 2024 (Filing No.)

Deepak Naik @ Dipak Naik
S/o Digambar Naik,
Major of age, 24 years
r/o H.No.311 Sheller,
C/o Geeta Komarpant Rangraj Building,
Canacona, South Goa (District).

... Petitioner

Versus

1 State of Goa,
Through the Public Prosecutor,
High Court, Porvorim Goa.

2 The Police Inspector,
Through in charge of
Canacona Police Station
Mastimol Canacona,
Dist. South Goa, Goa.

3 Ramkusta Phaldessai
S/o Gurudas Phaldesai
Through incharge of
Canacona Police Station
Mastimol, Canacona
Dist – South Goa.

... Respondents

Mr Rohan Desai with Mr Ashay Priolkar and Mr Pranav Pathak,
Advocates for the petitioner.

Mr S. G. Bhobe, Public Prosecutor for respondent Nos.1 and 2.

CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ

DATED : 18th NOVEMBER 2024

JUDGMENT (Per Nivedita P. Mehta, J)

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at the stage of admission.
3. The petitioner has preferred this petition seeking relief under Section 528 of the Bhartiya Nagarik Suraksha Sanhita (BNSS) for quashing F.I.R. dated 19.07.2020 bearing Crime No.128/2020 for offence punishable under Sections 269 and 188 of Indian Penal Code (for short "I.P.C.") registered with Canacona Police Station, Mastimol, Canacona, South Goa, and the criminal proceedings arising out of the same.
4. It is the contention of the petitioner that F.I.R. dated 19.07.2020 bearing Crime No.128/2020 under Sections 269 and 188 of IPC filed by respondent No.2 upon the complaint of respondent No.3 under the provisions of the Indian Penal Code against the petitioner is erroneous, unjust and bad in law. It is contended that the complaint of respondent No.3 based on which the F.I.R. in question has been registered does not disclose any ingredients satisfying the allegation of commission of any cognizable offence. The petitioner contends that even assuming

that the contents of the complaint are true and accurate there is no substance for registering cognizable offence. The petitioner submits that the FIR registered by respondent No.2 on the complaint filed by respondent No.3 is malafide, untenable and solely filed with an intention to harass the petitioner. The petitioner further contends that the FIR registered by respondent No.2 on the complaint registered by respondent No.3 is in violation of the fundamental rights of the petitioner under the Articles 14, 20 and 21 of the Constitution. The petitioner further contends that the complaint of respondent No.3 as well as F.I.R. registered on the basis of the said complaint by respondent No.2 does not contain any material particulars indicating that the petitioner was involved in the commission of any of the offences as alleged. The petitioner submits that any further continuation of criminal proceedings initiated on the basis of false and fictitious complaint will be solely to the detriment and harassment of the petitioner having regard to the peculiar facts in attendance which demands that the F.I.R. and the charge sheet deserve to be quashed and set aside. Accordingly, the petitioner prayed for quashing and setting aside the F.I.R. dated 19.07.2020 bearing Crime No.128/2020 under Sections 269 and 188 of IPC filed by respondent No.2 upon the complaint of respondent No.3 and also the charge sheet bearing No.131/2020 dated 26.09.2024.

5. According to respondent No.3 who is the informant in this case, has noticed that on 19.07.2020 at 13.00 hours at Sikrawol, Sheller, Canacona Goa, the petitioner was found moving without a mask and without any valid permission from the competent authority and therefore, the petitioner has committed an act known likely to spread of infection of Covid-19 coronavirus epidemic disease which is dangerous to life and also violating the order under Section 144 of the Criminal Procedure Code duly promulgated by the State Government of Goa. The petitioner also violated the guidelines imposed thereby contravening the provisions of Sections 269 and 188 of IPC. On such complaint, the first information report was registered against the petitioner.

6. Learned counsel for the petitioner submits that on the basis of the complaint filed by respondent No.3 the first information report in question has been registered; does not disclose any ingredients satisfying the allegations of commission of any cognizable offence. Further, it is the contention of the learned counsel for the petitioner that in view of Section 195(1) of the Code of Criminal Procedure Code (for short "Cr.P.C."), no Court can take cognizance of such F.I.R. and the crime registered on the basis of it. It is further contended by the petitioner that filing of charge sheet under the said crime is itself an abuse of process of law and therefore, even if the allegations in the F.I.R. are taken as

proved then also no offence under the aforesaid sections is made out.

7. Mr Desai relied upon *Konan Kodio Ganstone and others Vs State of Maharashtra*¹, and *Hla Shwe and others Vs State of Maharashtra*² in support of his contentions and prayed that F.I.R. dated 19.07.2020 bearing Crime No.128/2020 under Sections 269 and 188 of IPC filed by respondent No.2 upon the complaint of respondent No.3 and the Charge sheet bearing No.131/2020 dated 26.09.2024 be quashed and set aside.

8. Mr S. G. Bhohe, learned Public Prosecutor appearing for respondent Nos.1 and 2 strongly opposed the submissions made by learned counsel for the petitioner and on the basis of investigation supported the action taken against the petitioner. According to the learned Public Prosecutor, the concerned investigating officer has rightly arrived at the conclusion that the petitioner committed offence punishable under Sections 269 and 188 of IPC and therefore, the investigating officer after due investigation has filed the charge sheet against the petitioner before the learned JMFC, Canacona. It is significant to note that the

¹ 2020 SCC OnLine Bom 869

² Criminal Application (APL) No.453 of 2020 decided on 21.09.2020.

prosecution has claimed that the petitioner has committed offence under Sections 269 and 188 of IPC.

9. The discussion regarding the alleged offence committed under Section 269 of IPC has to be done after examining the provisions and the same is reproduced as under: -

"269. Negligent act likely to spread infection of disease dangerous to life. - Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

10. A perusal of Section 269 IPC shows that in order to attract the same, the act of an accused must be one which is likely to spread infection of any disease dangerous to life. A perusal of the report filed by the respondent under Section 173 Cr.P.C. does not indicate any prima facie evidence collected by the police as to whether the petitioner or the other members of the family were suffering from any infectious disease or would have caused the spread of any infectious disease. In the absence thereof, it cannot be assumed that the petitioner was either the carrier of infection or would have caused the spread thereof. Apart therefrom, the report also does not indicate the exact guidelines purportedly alleged to

have been violated. In the absence of any such specific guidelines which is alleged to have been violated, there is no presumption that the act of the petitioner was unlawful. There is no material placed before this Court that the petitioner was suffering from COVID-19 positive and was moving in the locality in violation of the order under Section 144 of Cr.P.C., duly promulgated by the State Government of Goa. A perusal of record shows that the petitioner was never medically examined by the Investigating Agency during investigation so as to find out that he was suffering from any communicable/infectious disease. Therefore, the person cannot be said to have committed an act punishable under Section 269 of IPC.

11. Section 188 of the IPC deals with the punishment for disobeying an order given by a public servant. Section 188 of IPC reads as follows: -

“188. Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or

injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.— It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.”

12. To attract Section 188 of IPC, it must be shown that on account of such disobedience on the part of the petitioner, a duly promulgated order by the Public Servant; something adverse happened. No such event is alleged to have happened. Therefore, this Court is of the view that Section 188 of IPC is also not made out. Thus, to constitute an offence under Section 188 of IPC, mere disobedience of order is not sufficient. The prosecution is required to prove the ingredients of offence therein to show that the person has committed any act purportedly mentioned in Section 188 of IPC. Hence, this Court does not prima facie find any ingredients

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exist of the offence punishable under Sections 269 and 188 of IPC. The decisions relied upon by learned counsel for the petitioner are not relevant to the facts of the present case.

13. In view of the above discussions, the petition is allowed and the FIR dated 19.07.2020 bearing Crime No.128/2020 for offence punishable under Sections 269 and 188 of IPC and the charge sheet No.131/2020 dated 26.09.2024 filed against the petitioner before the JMFC, Canacona is hereby quashed and set aside. The rule is made absolute in the above terms.

14. The criminal writ petition is accordingly disposed of.

NIVEDITA P. MEHTA, J

M. S. KARNIK, J