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

% **Pronounced on: 4th August, 2022**

\+ **W.P.(CRL) 698/2022, CRL.M.A. 5859/2022 (for stay)**

DECATHLON SPORTS INDIA PVT. LTD. ..... Petitioner
Through: Mr. Suhail Sehgal, Mr. Rahul Gaur & Mr. Chandan Kashap, Advocates

versus

STATE OF NCT OF DELHI ..... Respondent
Through: Mr. Karan Dhalla, Advocate for Mr.Avi Singh, ASC for the State

CORAM:
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

1. This petition has been filed under Articles 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short, **"Cr. P. C."**) for quashing of FIR No.510/2021, registered under Section 188 of the Indian Penal Code, 1860 (for short, **"IPC"**), at Police Station Preet Vihar, New Delhi.

2. The FIR records that on 30th December, 2021 at about 20:50 hrs., during patrolling, the beat patrol party of Head Constable Om Singh and Constable Omveer, found the shop/showroom, namely, "Decathlon Sports India Pvt. Ltd." being run on the Ground Floor of F-21, Preet Vihar open with 8-10 people standing near the reception. Since the person in-charge ignored the instructions of the Head Constable that the closing time for shops in Delhi was 8 PM in view of the Covid-19 notification, the

petitioner who failed to close the showroom was proceeded against, for having violated the said Covid-19 notification and a case under Section 188 IPC was made out against it.

3. Mr. Suhail Sehgal, learned counsel for the petitioner, submits that no FIR could have been registered against the petitioner without the written complaint of the Competent Authority, i.e., the Assistant Commissioner of Police, in the present case. Relying on the judgments of (i) ***Daulat Ram Vs. State of Punjab***, (1962) 2 SCR 812, (ii) ***Saloni Arora Vs. State of NCT of Delhi***, (2017) 3 SCC 286 (iii) ***Bajranglal Parikh & Ors. Vs. State of Assam*** 2008 SCC OnLine Gau 362 (iv) ***Gurinder Singh Vs. State***, 1996 SCC OnLine Del 31**,** (v) ***Apurva Ghiya v. State of Chhattisgarh***, 2020 SCC OnLine Chh 454 (vi) ***Sushil Sharma v. State***, 2015 SCC OnLine Del 7655 and (vii) ***Mohan Kukreja Vs. The State Govt. of NCT of Delhi & Ors***., 2019 SCC OnLine Del 6398, it was submitted that the FIR having been improperly registered ought to be quashed. It was submitted that the quashing was necessitated as the police were summoning the petitioner, unlawfully under Section 41A Cr.P.C..

4. Mr. Karan Dhalla, learned counsel for the respondent/State, on the other hand, submitted that the complaint under Section 195 Cr.P.C. has been obtained from ACP, Preet Vihar and that when the charge-sheet is filed, that would also be placed on the record. It was further submitted that since the violation of the Covid-19 norms was a cognizable offence, the police were entitled to take cognizance of the commission of the offence and register the FIR. Law proscribed the taking of cognizance by the court without a complaint of the public servant, but not the submission of a charge-sheet including such a complaint.

5. I have heard the submissions and have perused the record.

6. It may be useful to reproduce the provisions of law for ready reference. Section 195(1) Cr.P.C. reads as under:

> *"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.*
>
> *(1) No Court shall take cognizance-*
> *(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*
> *(ii) of any abetment of, or attempt to commit, such offence, or*
> *(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;*
>
> *(b) xxx xxx xxx"* ***(emphasis added)***

7. The argument urged before this Court is that in the absence of a complaint by the ACP, who had issued the order governing the opening and shutting of shops, showrooms, etc., not even an FIR could be registered. But this submission confuses the powers of the police with those vested in the court. An offence under Section 188 IPC has been described in the First Schedule to the Cr.P.C. as "cognizable and bailable offence". *"Cognizable offence"* has been defined under Section 2(c) Cr.P.C., as an offence for which a police officer could arrest without warrant. In other words, a *"cognizable offence"* is one in relation to which the police can take immediate action, affecting the liberty of a person.

8. Under Chapter-XI of the Cr.P.C., preventive action can be taken by

the police in certain cases. Section 149 empowers every police officer to interpose for the purposes of preventing the commission of any cognizable offence. He may arrest a person, who is designing to or is committing a cognizable offence (Sections 150 and 151 Cr.P.C.). However, the arrest cannot exceed a period of 24 hours from the time of arrest, unless there were some other requirements under law.

9. Chapter-XII deals with information to the police and their powers to investigate. Under Section 154 Cr.P.C., information in respect of cognizable offences/cases can be given orally or in writing. If given orally to the person in-charge of the police station, it is to be reduced into writing by him or under his direction, and to be read over to the informant. Whether so reduced or already given in writing, the same would have to be signed and the substance entered into the book meant for this purpose. Investigation can commence thereafter. In a non-cognizable case, the permission of the Magistrate would be required.

10. Section 188 IPC renders disobedience to an order duly promulgated by a public servant an offence, which would entail simple imprisonment for a term of one month or fine, which may extend to Rs.200/-, or with both, and where disobedience was to endanger human life, health or safety, punishable with imprisonment, which could extend to six months, or with fine, which may extend to Rs.1,000/-, or with both. The Explanation to this Section provides that it is not necessary that the offender should intend to produce harm or contemplate that his action of disobedience was likely to produce harm. It was sufficient for the purposes of the Section that in view of the order, duly promulgated by a public servant, his disobedience produced or was likely to produce harm.

11. It is common knowledge that during the Covid-19 pandemic, various orders had been issued to regulate public activity in order to prevent the spread of the deadly disease. The Government of NCT of Delhi vide its order bearing No.F.60/DDMA/COVID-19/2021/500 dated 28th December, 2021 had allowed shops/establishments dealing with non-essential goods and services to remain open between 10 AM to 8 PM on odd-even basis. It is not possible to believe that this order was not known to the petitioner. Interestingly, in the reply sent by the petitioner to the Notice under Section 41A Cr.P.C., reference was made to restricted movement due to the Covid-19 pandemic, preventing Ms. Akansha Singhal (Authorized Representative of the petitioner) from appearing in person before the police (Annexure P-4). It cannot be that the petitioner approbates and reprobates simultaneously. Therefore, knowledge of the order is undisputable.

12. It was the beat patrol party that had found the showroom open beyond 8 p.m.. The Status Report filed before this Court annexes a photo clicked on the mobile phone of Head Constable Om Singh at 8:46 p.m. on 30th December, 2021. Since disobedience of the order dated 28th December, 2021 had occurred, being a cognizable offence, the police was fully empowered to take action. The Head Constable Om Singh, in accordance with the provisions of the Cr.P.C., namely, Section 154(1) Cr.P.C. reported the matter to the Duty Officer at the Police Station Preet Vihar. That information is the FIR. To say that the FIR could not have been registered is, therefore, untenable.

13. The taking of cognizable by the court is governed by Section 190 Cr.P.C. The Section provides for the cognizance of any offence to be taken by a Magistrate through one of the three modes: (a) upon receiving a

complaint of facts which constitute such offence or (b) upon a police report of such facts or (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

14. *"Complaint"* is defined under Section 2(d) Cr.P.C., as any allegation, made orally or in writing, to a Magistrate with a view to his taking action under the Cr.P.C., but does not include a police report ***(emphasis added)***. The essential features of a complaint are that it is made directly to the Magistrate and does not include a police report. The complaint to the police will not be a complaint within the meaning of the word as used in the Cr.P.C.. A complaint to the police has to be reduced into writing and will constitute the First Information Report, setting the police investigation into motion. The complaint to the Magistrate seeks to set in motion the process of the court. Both are obviously governed by the relevant provisions of the Cr.P.C..

15. Section 195 Cr.P.C. bars the court from taking cognizance in some cases i.e., offences punishable under Sections 172 to 188 IPC (both inclusive) or its abetment or attempt, or criminal conspiracy, except on the complaint in writing of the public servant concerned, or his superiors. It is settled law that in the absence of the complaint, taking of cognizance is bad and such taking of cognizance has been quashed by the High Courts and the Apex Court. The judgments relied upon by the learned counsel for petitioner, namely, ***Bajranglal Parikh (supra), Gurinder Singh (supra), Apurva Ghiy (supra), Sushil Sharma (supra), Saloni Arora (supra), Daulat Ram (supra) and Mohan Kukreja (supra),*** are all cases that have set aside orders whereby cognizance was taken by the court in the absence

of a complaint of the concerned public servant.

16. But the question is whether on the basis of these judgments, the FIR itself can be quashed. The answer needs to be in the negative. The Cr.P.C. itself requires the reporting of the commission of a cognizable offence at the Police Station. The FIR is only in compliance with prescribed procedure, and so long as it discloses the commission of an offence, and in the absence of any other valid ground, ought not to be quashed. After due investigation, the police will submit a report under Section 173 Cr.P.C. before the learned MM. Whether a complaint by the ACP concerned or only a Report under Section 173 Cr.P.C. will be filed in the present case, cannot be presumed, as filing is yet to take place. If only a Report under Section 173 Cr.P.C. is filed, clearly the Magistrate will not take cognizance. However, if a complaint is also submitted to the court, the existence of an FIR would not constitute a bar to the taking of cognizance. The court is to take cognizance on the complaint of a public servant and not on the report that may forward such a complaint.

17. While this answers the petition, this Court would like to make a few suggestions on the police adopting a simpler procedure in such like cases, where they are dealing with ordinary citizens, who have no criminal background or evident propensities to commit a crime. Yes, when there is disobedience, consequences must follow and effectively and immediately. A citizen must respect the law and obey rules as a solemn duty. It is only then that the law will come to his protection.

18. An offence under Section 188 IPC is in the nature of a petty offence, unless combined with some other serious offences, such as, assault of a public servant, or other heinous crimes. The Criminal Procedure Code

provides for different procedures to deal with different offences. Thus, petty offences can be summarily tried. The more serious offences punishable with imprisonment upto two years can be tried as a 'summons case' while a case relating to an offence punishable with imprisonment for a term exceeding two years would be tried as a 'warrant case'. It is unfathomable why the offence under Section 188 IPC prescribing a punishment extendable upto three months or fine upto Rs.200/- or both, or when there is threat to health – as in this case due to Covid-19 pandemic – punishable with a maximum imprisonment of either nature for a period of six months or fine upto Rs.1,000/- or both, cannot be disposed of in a more purposeful manner. The offence in the present case was committed in late December, 2021. Yet, even after seven months, it has found no closure, when it ought not to have taken even seven days for disposal.

19. The fault lies in the procedure adopted. The registration of an FIR has resulted in the application of the Cr.P.C. in full force by the police, on the petitioner's authorized representative. Therefore, the Notice under Section 41A Cr.P.C., the response and the fear, bringing the petitioner before this Court. The beat patrol party, no doubt, had to report the matter to the Duty Officer, who could have processed it immediately as a DD entry, as in the case of non-cognizable offences, forwarding the same to the ACP, who could have immediately drawn up his complaint. As in a non-cognizable case, where the police bind the offender to appear before the court on a specific date, the police could have bound the petitioner. The complaint of the ACP placed before the Magistrate could have been received by the Magistrate, cognizance taken and disposed of summarily, as is done in the cases of other petty offences that are, of course, non-

cognizable offences *(Kalandara)*. But nothing limits the powers of the police or the court to adopt such a simple procedure in petty offences which are cognizable.

20. In fact, the police seem to have gone a little too far in the present case as they have proceeded to issue Notices under Section 41A Cr.P.C. demanding appearance at the police station. The Noticee stares into the possibility of an arrest on non-compliance, in a case where arrest really is not warranted. The purpose of the Notice under Section 41A Cr.P.C. is to avoid such an arrest. It is not necessary that the Noticee is to appear before the police officer, as under Section 41A Cr.P.C., directions could be issued to the offender to appear *"at such other place as may be specified in the Notice"*. The offender, being the petitioner herein, ought to have been directed to appear before the court on a specified date and time. Instead, directions are being issued to appear at the Preet Vihar, Police Station, Delhi, to *"ascertain facts and circumstances"* relating to the investigation! When everything was reported by the Head Constable Om Singh, what further investigations remained, is a moot question. The purpose of such a Notice rouses suspicions.

21. It is no doubt true that the police have to enforce orders that have been issued, particularly in the interest of public health and law and order. But, while doing so, an offence, such as the one under Section 188 IPC, cannot be equated with theft, mischief, cheating, criminal breach of trust, or causing of bodily harm, such as, hurt or attempt to culpable homicide, etc.. There have been innumerable cases where people have been found violating the "hours" governing business activities or even being in public places, without wearing a mask. These are all actionable wrongs and need

to be dealt with firmly, but it must also be effective. To drag such matters over months instead of dealing with them expeditiously, by converting the information received into a complaint by the competent public servant, to be placed before the court concerned and disposed of summarily, the registration of the FIR, the issuance of Notices under Section 41A Cr.P.C., to appear before the police station, the consequent necessity of filing a Section 173 Cr.P.C. report, have only led to complication of matters and colossal waste of time and human resources. No doubt, by disobedience, an offender invites penal consequences, as may be the case here. If the petitioner chooses to contest the evidence placed along with the complaint before the court, it has the right to do so, but the onus would then be on it to establish that there was no disobedience.

22. It would be appropriate for the police to take quick action in all the pending matters relating to violation of orders passed under the Disaster Management Act, 2005 by filing complaints as required under law before the court and the courts ought to dispose of these matters, without further delay. The offence has been made cognizable only in order to facilitate the police to take immediate action, including the arrest of a person, who is found disobeying the orders issued for maintenance of law and order and in the interest of public health. That purpose cannot be converted into one that subjects the offender to unnecessary harassment and entails violation of Article 21 of the Constitution of India, guaranteeing the right to life, of which liberty is an inalienable facet.

23. The present petition is disposed of declining the prayer to quash the FIR in question. However, the SHO concerned is directed to ensure that the complaint is forwarded to the concerned Magistrate's court

immediately. No further action on the Notice under Section 41A Cr.P.C. dated 15th March, 2022 is called for. However, the SHO while forwarding the complaint of the concerned ACP to the court shall issue a fresh Notice under Section 41A Cr.P.C. only to inform the petitioner of the date it is required to appear before the Magistrate for disposal of the case.

24. It may be underlined here that these directions may be followed only in respect of all the cases under Section 188 IPC that relate to the disobedience of No.F.60/DDMA/COVID-19/2021/500 dated 28th December, 2021 or other similar orders issued by the Government of NCT of Delhi under the Disaster Management Act, 2005 and connected with the Covid-19 pandemic.

25. The petition is accordingly disposed of, along with the pending application.

26. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

AUGUST 04, 2022
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