



THE CONFLICTING REQUIREMENTS OF SECTION 188 OF THE INDIAN PENAL CODE AND SECTION 195 OF THE CODE OF CRIMINAL PROCEDURE

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ABSTRACT The Conflicting requirement imposed both under Sections 188 of the Indian Penal Code and Section 195 of the Code of Criminal procedure is lying in the fact that under Section 188 a police officer can register an FIR and follow the procedure thereafter in case of any disobedience is found to any order duly promulgated by a public servant. However, as per Section 195 of Cr.PC. court cannot take cognizance of any matter punishable under Sections 172 to 188 of the Indian Penal Code unless a complaint in writing has been given by a public servant concerned to the court in this regard. So, the conflict arise when a police officer takes cognizance of a matter as per Section 188 of IPC and wants to submit a final report under Section 173 of Cr.PC. to the Court but As per Section 195 Cr.PC. Court can take cognizance only on the basis of a complaint filed by a public servant. This article is an attempt to explore the various aspect of this conflict and to suggest appropriate measures for resolving such conflict.

KEYWORDS : Conflict, cognizance, final report, complaint, public servant.

INTRODUCTION:

The Pandemic of Covid19 has devastated the whole world. All over the world different countries has adopted different measures to save mankind from this deadly virus. Many countries has undergone complete lockdown and thereafter gradually followed the unlock measures. On March 11, 2020, the World Health Organization (WHO) has asked governments across the world to take actions to prevent transmission at community level for reducing the epidemic to manageable clusters. Accordingly, a nationwide 'Janata Curfew' took place on March 22nd and many states have announced lockdown orders in its aftermath. India has also under gone complete lockdown and now India is witnessing the stage of unlock. In India from strict implementation of lockdown measures and unlock guidelines as well, since the beginning of lockdown the provisions of the Disaster Management Act and Epidemic Disease Act are in operation. Anyone who has violated lockdown orders or orders relating to unlock one can be implicated under the provisions of the Epidemic Disease Act which lays down the punishment for flouting such orders. Section 3 of the Act lays down the penalty for disobeying any order passed as per the provisions of the Act and Section 188 of IPC is an important part of such penalty. The conflict between Section 188 of the Indian Penal Code and Section 195 of the Code of Criminal Procedure which came in the limelight during this pandemic situation lies in the fact that under Section 188 police can register an FIR for disobedience to the order of public servant and follow the procedure thereafter prescribed by law. But Section 195 of the Code of Criminal Procedure imposes a bar on the filing of FIR under this situation as the Section provides that no court shall take cognizance of any offence punishable under Section 172 to 188 of the Indian Penal Code except on a complaint in writing by the public servant concerned or of some other public servant to whom he is administratively subordinate and thus, it makes the filing of FIR, investigation, final report and consequent cognizance superfluous.²

Section 188 Of The Indian Penal Code:

This Section provides that a public servant lawfully empowered has promulgated an order and the accused person knowingly has disobeyed such order which has caused or tends to cause obstruction, annoyance, injury or risk to any person lawfully employ or danger to life, health and safety.

Where the disobedience results into obstruction, annoyance, injury to any person lawfully employed, the offender shall be punished with imprisonment for a term which may extent to one month or with fine which may extent to two hundred rupees or with both.

But where it endangers human life, health and safety, the offender shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both. The nature of offence under this Section is cognizable and bailable one. During the Covid 19 lockdown it was found that any violation of the lockdown order shall fall under the second part of Section 188 of the Indian Penal Code³.

Validity of FIR under Section 188 of the Indian Penal Code:

Because of the bar imposed by Section 195 of the Code of Criminal Procedure a vital question arise as to whether a police officer can

exercise his power to register an FIR? Or police can exercise his power to arrest without warrant in cognizable offence? In *Raj Singh vs. State of Punjab* the court held that from a plain reading of Section 195 it is very clear that it comes into operation at a stage when the court intends to take cognizance of an offence but it has nothing to do with the statutory power of the police to investigate into an FIR which discloses the commission of a cognizable offence in accordance with Chapter XII of the Code even if the offence is alleged to have been committed to or in relations to any proceedings of the court. So, from the above decision it can be said that the statutory power of the police to investigate is not in any way controlled or circumscribed by Section 195 of the Code of Criminal Procedure⁴.

Notably, Section 188 of the Indian Penal Code in a common feature in most of the orders passed by public servant s during Covid 19 lockdown and hence a good understanding of the provision is very important not only for lawyers but for common men as well. The provision specifically dears with the offence of disobedience to order duly passed by public servant and punishes such offence. Interestingly, mens rea or guilty mind in not an essential requirement for establishing the commission of an offence under this Section. What is required is knowledge of the order so contravene and that such disobedience or contravention may result in or is likely to result in actual harm. The gravity of the punishment under ths Section varies with the severity of the consequences of the act⁵.

Section 195 of the Code of Criminal Procedure:

It stands for prosecution for contempt of lawful authority of public servants, for offence against public justice and for offence relating to documents given in evidence. This provisions provides that:

No court shall take cognizance of any offence punishable under Sections 172 to 188 of the Indian Penal Code or of any abetment to commit such offence or of any criminal conspiracy to commit such offence, except on a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate: of any offence under some other relevant provisions of the Indian Penal Code.

Sub Section (2) of Section 195 provides that if any complain has been made by a public servant under Sub Section (1) Any authority to which he is administratively subordinate may order the withdraw of such complaint and send a copy of such order to the court; and upon receipt of such order by the court; no further proceedings shall be taken on such complaint.

So this is the crux of Section 195 of the Code of Criminal Procedure and according to this provision a prosecution for disobedience to lawful Order or public servant is only possible on the basis of a complain by the public servant concerned or his superior public authority⁶.

The Conflict Between Section 188 Of The Indian Penal Code And Section 195 Of The Code Of Criminal Procedure:

As per the First Schedule of the Code of Criminal Procedure, an offence under Section 188 of the Indian Penal Code has been made

bailable and cognizable which means a police officer is not only having the power to arrest without warrant but it can register an FIR and start investigation into the offence as well. This further mean that at the conclusion of the investigation police can file the final report under Section 173(2) of the Code of Criminal Procedure before the competent Court. Exactly at this point Section 195 of the Code of Criminal Procedure comes into the picture. This provision envisages a special procedural requirement in relation to certain offences. Section 195(1) provides that no Court shall take cognizance of an offence punishable under Sections 172 to 188 of the Indian Penal Code except on a complaint filed by the public servant concerned or his superior which simply means that no complaint from private persons relating to disobedience to a lawful order of public servant offence can be entertained by the competent Court. This procedural weave in the enforcement of Section 188 of the Indian Penal Code has been widely ignored or misunderstood by investigating agencies or prosecution agencies or State authorities which resulted in litigations before the Courts from across the country⁷.

In *C. Muniappan & Ors. v. State of Tamilnadu*⁸ a question relating to the maintainability of prosecution under Section 188 of the Indian Penal Code, in the absence of a written complaint by a public servant came up for consideration before the Apex Court. In this case the Court elucidated that in case where the charge in under Section 188 of the Indian Penal Code, cognizance by the Court, as provided by Section 195 of the Code of Criminal Procedure, can only be taken on the basis of a written complaint by a public servant who's lawful order has been contravened, and if not, the whole proceeding will stand vitiated and will be liable to be set aside. The Apex Court further while referring to the object of Section 195 observed that the legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by a person actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal Courts being wasted by endless prosecutions.

A recent judgment of the Madras High Court, *Jeevanandam and Ors.⁹ V. Stae and Ors.* Have further muddled the water. In this case it has been held that the offence under Section 188 of the Indian Penal Code being cognizable by itself does not enable the police officer to register an FIR, because such registration of FIR has to necessarily end with a police report and a cognizance on the basis of such report cannot be taken by the magistrate because of the bar imposed by Section 195 of the Code of Criminal procedure. The Court further held that in a case under Section 188 of the Indian Penal Code, the role of a police officer will be confined only to preventive actions as mention under Section 41 of Code of Criminal Procedure and he cannot register an FIR even though an offence under Section 188 in a cognizable one.

Possible Ways For Resolving The Conflict:

The conflict as discussed above is of immense significance and to find out ways to mitigate such conflict is really very important as a legal dilemma of such kind is very dangerous to the rights of the common men. In this regard the decision of the Hon'ble Supreme Court in *State of Punjab vs. Raj Singh*¹⁰, can play a defining role to resolve the dispute. In this case the Court held that "...From plain reading of Section 195 Cr.P.C. it is manifest that the bar under Section 195, Cr.P.C. comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) Cr.P.C.; and it has nothing to do with the statutory power of the police to investigate into an F.I.R which discloses a cognizable offence...

...In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 Cr.P.C. It is of course true that upon the charge sheet (challan), if any, filed on completion of investigation into such an offence the Court would not be competent to take cognizance thereof in view of the embargo of Section 195 (1) (b) of Cr.P.C.".

This provision of law remains coherent and has been followed by the Supreme Court and various High Courts over the years. Therefore, The correct proposition of law is that offence under Section 188 of the Indian Penal Code does remain a cognizable offence as clearly mentioned in the First Schedule of Cr.P.C. The police in that case has the power to taken action to prevent such an offence form being committed and may arrest a person without warrant as provided by Section 41 of Cr.P.C. The police has the power, and in fact, the obligation to register an F.I.R and proceed to investigate into such offence, and may move further to prepare a report on the basis of such investigation. However, the Court can take cognizance of an offence

under section 188 of the Indian Penal Code only on a written complaint filed before it by the public servant whose order has been contravened by the accused. So, If along with the police report, a complaint by the public servant concerned can be filed before the Court otherwise having jurisdiction to take cognizance, then there shall be no problem so far as the bar imposed by Section 195 of the Cr.P.C is concerned. The Court on examination of the complainant and witnesses under Section 200 of Cr.P.C., may conduct an inquiry or direct an investigation to be made under Section 202 of Cr.P.C. and then may either issue process under Section 204 of Cr.P.C. or dismiss the complaint under Section 203 of Cr.P.C. So, a prosecution under Section 188 of the Indian Penal Code cannot be initiated simply on the basis of police report¹¹.

However, in the present situation as the Courts are not fully functional, so, it may not be possible on the part of the public servant concerned to approach the Court to submit the complaint in writing. Under such a situation the public servant may file an informal complaint to the police and in this case the public servant is approaching the police first. It may be the case that the police prepares a preliminary informal report on the basis of the investigation. Now, when it becomes practically possible to approach the Court and submit the complaint in writing, the public servant can file the complaint under Section 195 (1) of Cr.P.C. along with the informal preliminary investigation report, if any. The informal preliminary investigation done by the police immediately after receiving the informal complain is better than the investigation done under the regular course considering the significance of time. The administrative superior authority as mentioned in Section 195 (1) (a) can supervise the process and prevent arbitrary action or bias. In this way both the provisions can operate together rather than one being operative while excluding the other¹².

CONCLUSION:

While concluding it can be said that the police and the State administration is playing a pivotal role in managing the pandemic situation of Covid 19. Certain compulsory measures have been adopted to prevent community spreading in accordance with the law. The Epidemic Disease Act, the Disaster Management Act, Section 188 of the Indian Penal Code along with some other laws together framed the legal framework to assist the public authorities in the efficient discharge of their duties. During this pandemic whenever, punitive measures are sought to be adopted because of the interplay of Section 188 of the Indian Penal Code and Section 195 of the Code of Criminal Procedure, some conflict, confusion arose. As the action of the State authorities are very much connected with the rights of the citizens so, it became pertinent to resolve those confusions or conflicts. The measures that have been mentioned in the preceding paragraph may be adopted by State authorities in order to avoid conflicts in the near future while operating in this pandemic situation to protect the Country and to win the battle against Covid 19.

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