

For the same reasons, as stated above, the order passed by the learned Tribunal is not sustainable. The findings of the learned Tribunal that the junior to the applicants Sushil Kumar and Charanjit Kaur have been given appointment, is based upon the minutes of the Committee. Such finding has been returned without any pleading and without giving any opportunity to the petitioners to explain such noting in the minutes of the Committee. It is the case of the petitioners that against 49 Group-C Posts, 4 posts had already been filled up through compassionate appointments and similarly out of 133 Group-D posts, 13 posts were filled up by way of compassionate appointment. Therefore, the said fact was also asserted in the written statement before the learned Tribunal and not controverted by the applicants. Therefore, the learned Tribunal was not justified in returning a finding to the effect that juniors to the applicants have been granted appointment on compassionate grounds.

(31) In view of the above, the orders passed by the learned Tribunal in all the three cases are unjustified and not sustainable. Consequently, we allow all the three writ petitions and set aside the orders passed by the learned Tribunal. The Original Applications filed by the applicant-respondents are dismissed with no order as to costs.

R.N.R.

Before M.M. Kumar & T.P.S. Mann, JJ,

JIWAN KUMAR,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 772 of 2007

18th March, 2008

Indian Penal Code, 1860—Ss. 188—Code of Criminal Procedure, 1973—Ss. 144 and 195(1)(a)—Constitution of India, 1950—Art. 226—Drugs and Cosmetics Rules, 1945—District Magistrate issuing promulgation order w/s 144 Cr. P.C. with regard to sale and distribution of Medicines—Allegation against petitioner

of selling narcotic drugs without prescription slips of doctors—Registration of FIR against petitioner for offence u/s 188 Cr.P.C.—Whether District Magistrate can issue notification in exercise of powers u/s 144 Cr.P.C.—Held, no—Sale and distribution of medicines regulated by Drugs and Cosmetics Act and Rules framed thereunder—Issuance of notification under general law would be rendered void as it would tantamount to encroach upon the field earmarked for special law—Provisions of S. 195(1) Cr.P.C. restrain Court from taking cognizance of any offence punishable u/s 188 IPC unless a complaint in writing is made to it by public servant concerned—No complaint in writing by public servant against petitioner—Registration of FIR and launching of proceedings thereafter not permitted by provisions of Cr.P.C. and cannot be allowed to be sustained—Petition allowed, promulgation order, FIR and all proceedings taken thereunder against petitioner quashed.

Held, that the Legislature has already enacted Drugs and Cosmetics Act besides framing rules thereunder to regulate the sale and distribution of medicine. Under these circumstances, the issuance of notification by the District Magistrate in exercise of powers under Section 144 of the Code would be rendered void as it tantamount to encroach upon the field earmarked for the special law.

(Para 7)

Further held, that proceedings under Section 188 IPC can only be initiated on the basis of a complaint in writing of the public servant concerned made to the Court or to some other public servant to whom he is administratively subordinate. Section 195(1) of the Code restrains the Court from taking cognizance of any offence punishable under Section 188 IPC unless a complaint in writing is made to it by the public servant concerned. In other words, no FIR can be registered by the police. It would not be open to the police to register a case against the offender for offence under Section 188 IPC and then to submit a report under Section 173 of the Code to the concerned Court. It is, thus, clear that the proceedings against the petitioner under Section 188 IPC have been initiated on the basis of the FIR and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1) (a) of the Code. The registration of FIR and the launching of proceedings thereafter against the

petitioner is not permitted by the Code and thus, cannot be allowed to be sustained.

(Paras 8 & 10)

Akshay Jain, Advocate, *for the petitioner.*

Vishal Munjal, Deputy Advocate General, Punjab, *for the respondents.*

JUDGMENT

T.P.S. MANN, J.

(1) The relief sought by the petitioner is the quashing of promulgation order, dated 27th May, 2005 (P.2) issued by the District Magistrate, Mansa under Section 144 Cr.P.C. and also of FIR No. 128 dated 16th June, 2005 registered at Police Station City, Mansa under Section 188 IPC (P.3) and all the proceedings pending thereunder on the ground that the same were illegal, arbitrary, unconstitutional, against the principles of natural justice and also against the provisions of the Code of Criminal Procedure.

(2) According to the petitioner, he is a registered Pharmacist and carrying on business as such under the name and style of Public Medical Hall, Near Bus Stand Thikriwala, Mansa and authorized,—*vide* licence (P.1) to sell, stock, exhibit and offer for sale or distribute by retail and whole sale the drugs as provided under the Drugs and Cosmetics Rules, 1945. The said licence was issued on 1st January, 2003 and now stood renewed upto 25th April, 2011. It is then submitted that District Magistrate, Mansa promulgated an order under Section 144 Cr.P.C. (P.2) that no chemist in the district, whether retailer or whole seller, will sell any drug/medicine mentioned in Annexure-1 thereto, without the prescription from a registered medical petitioner. It was also directed in the said order that all chemists will maintain complete record of their current stock of the specified drugs which record shall be available for inspection to all Executive Magistrate, Police Officials of the rank of Deputy Superintendent of Police and above or any other person specially authorized by the District Magistrate in writing. The promulgation was made effective from 27th May, 2005 to 27th July, 2005. Under the garb of the said order, the Police registered an FIR against

the petitioner on 16th June, 2005 (P.3) with the allegations that it received a secret information against the petitioner of selling narcotic drugs from his shop without the prescription slips of the doctors and these drugs included Proxyvon Spasmocip, Finotil, Rexcof etc. Accordingly, he prayed for quashing of the promulgation order (P.2) and of FIR (P.3).

(3) Reply was filed on behalf of respondent No. 2, wherein it was submitted that the promulgation order (P.2) was issued in the public interest, as it was brought to the notice of the said respondent that many persons, especially the youngsters and the economically weaker classes of the district had become prone to various intoxicant drugs and medicines. Even the media had published many instances in this regard. It was commonly observed that various chemists were selling intoxicant drugs and medicines without any prescription of medical practitioner. Therefore, necessity was felt to pass the promulgation order (P.2).

(4) Respondent No. 3 also filed a reply, wherein it was submitted that on receipt of reliable information from a secret informer, FIR (P. 3) was registered against the petitioner on 16th June, 2005 and after the completion of the investigation, *challan* was presented against the petitioner before learned Chief Judicial Magistrate, Mansa on 20th December, 2005 and charge under Section 188 IPC stood framed against the petitioner on 20th January, 2006 and the case now fixed for recording of prosecution evidence.

(5) We have heard learned counsel for the parties and perused the pleadings, besides the various documents brought on the record.

(6) On 27th May, 2005, District Magistrate, Mansa, while exercising powers under Section 144 of the Code of Criminal Procedure (for short 'the Code') promulgated an order (P.2) that no chemist in the district will sell any drug/medicine as specified in Annexure-1 thereto without a prescription from registered medical practitioner. Further that in the public interest, all the chemist/medical/drugs stores (whether retail or wholeseller) will maintain the complete record of their current stock, which will be available for investigation to all Executive Magistrate, Police Officials of the

rank of Deputy Superintendent of Police and above or any other person specifically authorized by the District Magistrate in writing. This order was passed in order to check the sale of large number of prescription drugs by chemists over the counter without valid prescription to youth and persons belonging to economically weaker section, who were falling prey to the menace of narcotics and drugs. The promulgation order (P.2) reads as under :—

“OFFICE OF THE DISTRICT MAGISTRATE, MANSA
(MA Branch)

Order under Section 144 Cr. P.C., 1973 Dated :—

ORDER

Whereas it has been brought to my notice by various social and non-government organizations that a large number of persons, especially youth and those belonging to economically weaker sections are falling prey to the menace of narcotics and drugs. It has also been highlighted in the media that a large number of prescription drugs which are currently being illegally sold by chemists over the counter without valid prescription, are being misused for their narcotic effects. The abuse of such drugs and chemicals beyond the prescribed dosage and without prescription of a registered medical practitioner is leading to deterioration in law and order with the increasing incidences of petty crimes and disturbance of peace and tranquility, along with disruption in family life.

2. And whereas it has come to my notice that a person is easily initiated in to misuse of drugs due to easy availability of various types of sedatives, Painkillers, anti-allergic, anti-histamines, injections, cough syrups, etc. in regard to which certain medicines are consistently prone to misuse as intoxicants.

3. Whereas in the public interest, I Raj Kamal Chaudhary, I.A.S., District Magistrate, Mansa being satisfied that sale of medicines without prescription and non-maintenance of the stock registers sale and purchase registers leads to easy availability of intoxicating drugs, which is harmful to the health, mind and life of youth in particular and public in general and therefore, immediate measures are required in the public interest.

4. Therefore, in exercise of the powers vested in me under Section 144 of the Code of Criminal Procedure, 1973, I order that no chemist in this district, whether retailer or whole seller, will sell, whether by retail or wholesale, any medicine which are detailed in Annexure-I (overleaf) without a prescription from registered medical practitioner. It is further directed that in the public interest that all the chemist/medical/drugs store (whether retail or wholesale) will maintain complete record of their current stock, sales and purchase register, which will be available for inspection to all Executive Magistrate, Police Officials of the rank of DSP and above, or any other person specifically authorized by the undersigned in writing.

5. In view of the urgency of the matter, this order is being passed *ex parte* and is addressed to the public in general.

6. This order shall remain in force for a period of two months from the date of issue i.e. 27th May, 2005 to 27th July, 2005.

7. This order shall be affixed on the Notice Board of the District Magistrate, SSP, Civil Surgeon, all SDMs, Tehsildars in the district and shall be promulgated by announcements through publicity van of the Public Relations Department, Mansa and affixed at conspicuous place.

8. Given under my hand and seal today the 27th day of May, 2005.

Place : Mansa

RAJ KAMAK CHAUDHARY I.A.S.,

The 27th May, 2005.

District Magistrate, Mansa.

(7) The stand of the petitioner is that the District Magistrate did not have any valid reason to issue notification in exercise of powers under Section 144 of the Code with regard to the sale and distribution of medicines as the sale and distribution of medicines is governed by special Act and Rules. The argument has merit in it. The legislature has already enacted Drugs and Cosmetics Act, Besides framing rules thereunder to regulate the sale and distribution of medicines. Under these circumstances, the issuance of notification under the general law would be rendered void as it tantamount to encroach upon the field ear-marked for the special law.

(8) Coming to the attack of the petitioner in regard to the registration of the FIR, it may be noticed that proceedings under Section 188 IPC can only be initiated on the basis of a complaint in writing of the public servant concerned made to the Court or to some other public servant to whom he is administratively subordinate. Section 195(1) of the Code restrains the Court from taking cognizance of any offence punishable under Section 188 IPC unless a complaint in writing is made to it by the public servant concerned. In other words, no FIR can be registered by the police. It would not be open to the police to register a case against the offender for offence under section 188 IPC and then to submit a report under Section 173 of the Code to the concerned Court. Reliance in this regard can be placed on **Jagtar Singh versus Union Territory, Chandigarh (1)**, wherein this Court held as under :—

“These facts are not disputed. Language of Section 195(1) of the Code does not leave scope for any ambiguity and is the section which has to be construed strictly. In accordance with the settled principles of interpretation applicable to criminal jurisprudence the provisions of Criminal Procedure Code or penal laws have to be strictly construed so as to be given meaning except what is intended by the Legislature in the language used itself. The relevant portion of Section is that, *“No court shall take cognizance-except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate”*. The intention appears to be clear that where an offence is committed under Section 188 IPC, the Legislature has made it obligatory that the public servant before whom such an offence is committed, he will file a complaint to the Magistrate and the cognizance of the offence by the concerned Court is dependent upon the complaint in writing by such officer or an officer superior to such officer.

(1) 1996(1) RCR (Crl.) 669

The counsel for the petitioner has relied upon **Sawaran Singh versus The State of Punjab (2)**, and **Bhagat Ram versus The State of Punjab (3)**, In both these cases the Court has indicated that the scope of Section 195(1) of the Code does not contemplate investigation in a normal way by the police and filing of the *Challan*, but the complaint has to be presented directly to the concerned Court. In the present case though the complaint is stated to be addressed to the court, but as it appears it was not presented to the Court and the Court did not pass any orders at that stage.”

(9) It is admitted case of respondent No. 3 that FIR No. 128 (P.3) was registered against the petitioner on 16th June, 2005 under Section 188 IPC. The petitioner was thereafter arrested and interrogated. After the completion of the investigation, the *Challan* (final report under Section 173 of the Code) was presented against the petitioner before learned Chief Judicial Magistrate, Mansa on 20th December, 2005 and the charge was framed on 20th January, 2006. Further that the case is now fixed for recording of prosecution evidence.

(10) It is, thus, clear that the proceedings against the petitioner under Section 188 IPC have been initiated on the basis of the FIR and not on the basis of any complaint in writing of the public servant concerned as is required by Section 195(1) (a) of the Code. The registration of FIR and the launching of proceedings thereafter against the petitioner is not permitted by the Code and thus, cannot be allowed to be sustained.

(11) Resultantly, the petition is allowed. Promulgation order, dated 27th May, 2005 (P-2) issued by the District Magistrate, Mansa is quashed. Similarly, FIR No. 128, dated 16th June, 2005 registered at Police Station, City Mansa under Section 188 IPC (P-3) and all the proceedings taken thereunder against the petitioner are also quashed and set aside.

R.N.R.

(2) 1994(3) Recent C.R. 352

(3) 1991(1) Recent C.R. 192