



CRM-M-48382-2025 (O&amp;M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH****CRM-M-48382-2025 (O&M)****Reserved on : 29.09.2025****Pronounced on : 30.09.2025**

Rajvir Singh

..... Petitioner

VERSUS

State of Punjab

..... Respondent

**CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH**

Argued by: Mr. G.S. Randhawa, Advocate for the petitioner.

Mr. K.D. Sachdeva, DAG Punjab.

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**SURYA PARTAP SINGH, J.**

1. For the commission of offence punishable under Section 188 of Indian Penal Code, the FIR No.47 dated 03.04.2020 has been lodged in Police Station Garhshankar, District Hoshiarpur. With regard to commission of offence mentioned in the abovementioned FIR, the petitioner is being prosecuted. Aggrieved of the abovementioned action of the police, the present petition has been filed by the petitioner for quashing of abovementioned FIR.

2. In nut-shell, the facts emerging from record are that the abovementioned FIR came into being in response to an information memo sent by ASI Mohinder Pal, who stated that on 03.04.2020, he was present at Nangal Chowk, Garhshankar in discharge of his duty, when he noticed two



boys riding on a motorcycles bearing registration No.PB07-S-3655, who were approaching Nangal Chowk from Anandpur Sahib side. According to above-named ASI, he stopped the abovementioned motorcycle, enquired the name and address of the occupants of the same and asked for curfew pass, but they could not produce the same.

3. It is the case of the prosecution that the abovementioned two persons, namely Rajvir Singh (petitioner) and Karanvir Singh, by violating the conditions of curfew, had committed the offence under Section 188 of IPC, and therefore, the FIR in question.

4. Heard.

5. It has been contended on behalf of the petitioner that the method adopted by the prosecuting agency for prosecuting the petitioner for the commission of abovementioned offence is contrary to the laid down procedure of law. According to learned counsel for the petitioner, the petitioner is a law-abiding citizen, and that if any violation was noticed by the police officer, the only course available to him, for the prosecution of petitioner, was to move a complaint before the competent authority. As per learned counsel for the petitioner, since the cognizance against the petitioner has been taken without any complaint filed by the authorized person, the prosecution of petitioner on the basis of FIR is illegal. The learned counsel for the petitioner has further contended that the factual and legal matrix involved in the present case are squarely covered by the verdict of the



Division Bench of this Court in *CRM-M-26992-2024*, titled as '*Sarthak Kaushik Vs. State of U.T. Chandigarh*'.

6. The learned State Counsel has controverted the abovementioned arguments. According to learned State Counsel, in the present case there are very specific and categorical allegations with regard to violation of prohibitory order passed by the District Magistrate, and therefore, it is apparent that the offence under Section 188 of IPC was committed by the petitioner. As per learned State Counsel, if there is any defect in the process with regard to prosecution of the petitioner, that can be raised before the learned trial Court only, and that the quashing of FIR in the given situation is not permissible.

7. The record has been perused carefully.

8. At the very outset, it is pertinent to mention here that in the present case, there is no denial with regard to following facts:-

- i. that on account of COVID-19 pandemic, prohibitory orders were imposed by the District Magistrate and orders were in operation on 03.04.2022, when the FIR was lodged;
- ii. that the petitioner was not having any permission to travel on motorcycle during lockdown period; and
- iii. that in view of conduct of the petitioner, he has been prosecuted by filing of FIR, and no complaint has been moved by the competent authority which had imposed the prohibitory order.



9. In view of abovementioned fact situation, the observations made by the Division Bench of this Court in *Sarthak Kaushik's* case (supra) are relevant. While referring to Section 195 of CrPC, it has been laid down by the Division Bench of this Court that there is a bar for a Court to take cognizance in any other way except on filing a complaint by the public servant, authorized to do so. As per Division Bench of this Court, if the complaint is not filed by the authorized public servant, it would not be permissible.

10. In this regard, the principles laid down by the Hon'ble Supreme Court of India in the case of '*M.S. Ahlawat Vs. State of Haryana*', (2000) 1 SCC 278, are also relevant, wherein it has been laid down by the Hon'ble Supreme Court of India that provisions as enshrined under Section 195 of CrPC are mandatory in nature, and that no Court has jurisdiction to take cognizance of any of the offences mentioned therein, unless there is a complaint in writing as required under the law.

11. If the abovementioned legal propositions are applied to the facts and circumstances of the present case, it comes on surface that firstly the prosecution against the petitioner has been launched by filing a complaint at the instance of one ASI, who was not authorized to file a complaint in the Court of law. Secondly, the cognizance against the petitioner has been taken on the basis of a police report, and not on the complaint of public servant, authorized to file the complaint. Thus, it is hereby held that the present petition is covered by the principles of law, propounded by the Division Bench of this Court in *Sarthak Kaushik's* case (supra).



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12. In view of abovementioned observations, once a defective process has been adopted by the prosecuting agency, for the prosecution of petitioner, and the cognizance of offence through such process is barred, I hold that continuation of prosecution of petitioner on the basis of abovementioned defective process is not only an abuse of process of law, but also if allowed, will result into unnecessary harassment to the petitioner in a case, the verdict of which is already written on the wall. Thus, in view of above discussed incurable defect any such trial is going to be a futile exercise.

13. Keeping in view the abovementioned observations, it is hereby held that there is merit in the contention raised by the petitioner, and that, the continuation of prosecution of petitioner would be an abuse of process of law. Thus, by accepting the present petition, the FIR in question is hereby quashed accordingly.

14. Pending miscellaneous application(s), if any, shall stand disposed of.

**(SURYA PARTAP SINGH)**  
**JUDGE**

**SEPTEMBER 30, 2025**

*Gaurav Thakur*

Whether speaking / reasoned  
Whether Reportable

Yes/No  
Yes/No