

Calcutta High Court

HON'BLE JUDGE(S): **BIBEK CHAUDHURI , J**

NITESH SANGHI V. STATE OF WEST BENGAL

C.R.R. - 181 of 2023, decided on 26/04/2023

Penal Code (45 of 1860) , S.188, S.279, S.34— Disobedience to order of public servant - Breach of lock down protocols -While performing law-and-order duty during period of lockdown promulgated by State on account of Covid pandemic, as many as 28 persons were found at different points of time loitering on road and they were arrested - 28 persons werenot arrested in a group but were arrested separately - There cannot be any common intentionof all arrested persons to disobey order of lockdown - There was absolutely no evidence on record that arrested persons were affected with Covid or were negligently walking throughroad to spread Covid infection - Accused were not medically tested by IO and if they were not suffering from Covid, there cannot be any spread of infection - They however prima facie committed offence u/S. 188 - Conviction u/S. 188 sustained.

(Para 4, 5, 6, 7, 8, 9, 10)

Name of Advocates

Sougata Banerjee, for Petitioner; Sujata Das for Respondent.

1. **ORDER:-**Having heard the learned Advocate for the petitioners and after going through thematerials available on record, this Court is of the view that the instant revision can be disposed of here and now with the assistance of the learned Advocate for the State. Therefore, Ms. Sujata Das, learned Public Prosecutor-in-Charge is requested to assist this Court on behalf of the State of West Bengal.

2. Taratala Police Station Case No.19 dated 25th March, 2020 was registered on the basis of a suo moto complaint filed by a police officer attached to Taratala Police Station, stating, inter alia, that while performing the law and order duty during the period of lockdown promulgated by the State Government on account of Covid pandemic, as 2 many as 28 persons were found at differentpoints of time loitering on the road and they were

arrested.

3. The said persons were booked for committing offence under Sections 188/269/34 of the Indian Penal Code.

4. It is found from the suo moto complaint itself that 28 persons were not arrested in a group. They were arrested during the duty hours of the police officer separately. The petitioners are two brothers who were arrested when they were proceeding through the road in front of the CESC Office at Taratala. Thus, when the said 28 persons who violated the order of lockdown and came to the road were arrested separately, there cannot be any common intention of all the arrested persons to disobey the order of lockdown duly promulgated by the State Government. They had also no common intention to spread infectious disease in furtherance of their common intention. Thus, in my view the ingredients of Section 34 of the Indian Penal Code is absent in the instant case. There is absolutely no evidence on record that the arrested persons were affected with Covid or that they were negligently walking through the road to spread infection of Covid disease which is dangerous to life. The petitioners were not medically tested by the Investigating Officer to ascertain as to whether they were suffering from Covid on the date of their arrest. If they were not suffering from Covid, there cannot be any spread of infection by an asymptomatic person. Thus, I also do not find any supportive evidence for further prosecution against the petitioners under Section 279 of the Indian Penal Code.

5. However, it is not in dispute that the present petitioners were walking through the road at Taratala during the period of lockdown and for violating the declaration of lockdown promulgated by the State Government, they prima facie committed offence under Section 188 of the Indian Penal Code.

6. It is submitted by the learned Advocate for the petitioners that the petitioners are required to go abroad for their further studies and business purpose. Due to the pendency of the case, the petitioners are not getting requisite permission/Visa from the concerned authority.

7. Section 188 of the Indian Penal Code is a penal provision of disobedience to order duly promulgated by the public servant. The offender may 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.

8. Considering the nature of the offence committed by the petitioners, the instant revision is disposed of directing the petitioners to appear before the learned Chief Judicial Magistrate at Alipore, South 24 Parganas within a fortnight.

9. The learned Chief Judicial Magistrate at Alipore is directed to examine the accused persons under Section 251 of the Code of Criminal Procedure within one week thereafter and if they plead guilty, he shall consider whether an amount of fine will be sufficient punishment for 4 them or not taking into account the nature of offence committed by them.

10. In any event, the learned Chief Judicial Magistrate shall dispose of G.R. Case No.1067 of 2020 within three weeks from the date of order if the petitioners plead guilty at the time of their examinations under Section 251 of the Code of Criminal Procedure.

11. With regard to sentence, though this Court has made some observation hereinabove, it is made clear that such observation is not binding upon the learned Chief Judicial Magistrate, Alipore and he shall pass his order according to his conscience without being influenced in any way by this order so far as it relates to sentence.

12. The instant revision is, thus, disposed of.

Order Accordingly