



# Jus Corpus Law Journal

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## Case Comment: Saurabh Sharma vs Sub-Divisional Magistrate

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### INTRODUCTION

The COVID-19 Pandemic resulted in the entire world coming to a standstill in 2020. Since then the virus has evolved and its dynamics have changed. One thing, which has remained constant, however, is the advice of doctors, scientists, and the government to follow ‘COVID Appropriate Behaviour’. Inter alia, an essential part of this is wearing a mask fully covering the nose and the mouth. This has proven to have scientifically proven benefits to the user as well as the general public. *Saurabh Sharma v Sub-Divisional Magistrate* was a fascinating case, in which the court had to adjudicate on several important questions, all of which revolved around the wearing of a mask. This interesting case serves as an illustration as to how the coronavirus has initiated a new form of ‘COVID Jurisprudence’ which would have been unimaginable without the pandemic. This case comment attempts to expound the facts, issues, and laws applicable to the case. Further, an analysis is made of the judgment, followed by a description of the changes which have taken place after the judgment.

## **BRIEF FACTS**

This particular case was heard in consonance with three other writ petitions filed before the Delhi High Court. The reason for this is the facts of all the four writ petitions were similar. The brief facts of the case concerning the first petitioner were as follows:

Saurabh Sharma, a practicing advocate of the past 20 years was traveling in his car. It is not a matter of dispute between the parties, that the petitioner was alone in his car. This fact is of extreme importance as it applies to the other petitions as well. Thereafter, the petitioner's vehicle was stopped by certain officials including the Executive Magistrate, a Constable, and a Delhi Police Inspector. The officials informed the petitioner that a fine of Rs 500 was being imposed on him, for not wearing a mask at a public place. The case scenario of the second petitioner was also similar wherein a similar fine was imposed on him, for not wearing a mask while inside a vehicle. The petitioner was informed that by not wearing a mask, he was in contravention of the Delhi Epidemic Diseases (Management of COVID-19) Regulations, 2020 (Regulations, 2020), under which the fine had to be paid by him. The scenario of the third and the fourth petitioner, all of whom were lawyers was on similar footing, wherein a fine was imposed on them for not wearing a mask inside their respective vehicles. The circumstances of all the petitioners were alike, as all of them were alone while they were traveling.

## **ISSUES IN CONTENTION**

Two fundamental questions arose, in reference to the facts of the case. Firstly, whether it is mandatory for individuals traveling alone in their private cars to wear a face mask. Secondly, if the fine imposed as per the Regulations, 2020 and other rules is valid and legal. A question flowing from the first fundamental question was whether an individual traveling alone in his car would constitute to be a public space or not.

## **SUMMARY OF ARGUMENTS**

Counsel for the first petitioner in essence argued that a private vehicle with no other passenger cannot be considered a 'public space'. He further asserted that since the date of the incident

was 9th September 2020, the June notification should be relevant rather than the April notification. His second argument was premised on the fact that the aforementioned June notification does not define the term 'public place'. Mr. Farman Ali, who was the counsel appearing for the Ministry of Health and Family Welfare submitted that 'Public Health and Sanitation' falls in List 2 of the VII Schedule of the Constitution of India and therefore, the exclusive responsibility is of each State. He further stated that the MoHFW had not released any specifications regarding wearing a mask while being alone in a vehicle.<sup>1</sup> Countering the argument of the petitioners, counsel for the Government of the National Capital Territory of Delhi (GNCTD) argued that both the above-mentioned April and June notifications were issued under the Disaster Management Act, 2005<sup>2</sup> (DMA) and the Epidemic Diseases Act, 1897<sup>3</sup> (EDA). Moreover, he asserted that the June notification was merely in addition to the April notification issued by the Delhi Disaster Management Authority (DDMA). Thus, he argued that they are authorized by law, and not wearing a mask inside the vehicle would constitute a violation of the Regulations, 2020.

### **RULE OF LAW APPLICABLE**

The two legislations concerning this case were the Epidemic Diseases Act of 1897 and the Disaster Management Act of 2005. Section 2 of the EDA empowers the respective state government to make rules to restrict the spread of an epidemic disease. An excerpt of the Section is as follows:

*“Power to take special measures and prescribe regulations as to dangerous epidemic disease.*

*(1) When at any time the (State Government) is satisfied that (the State) or any part thereof is threatened with, an outbreak of any dangerous epidemic disease, the (State Government), if (it) thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such*

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<sup>1</sup> *Saurabh Sharma v Sub-Divisional Magistrate* (2021)

<sup>2</sup> Disaster Management Act, 2005

<sup>3</sup> Epidemic Diseases Act, 1897

*temporary regulations to be observed by the public or by any person or class of persons as (it) shall deem necessary to prevent the outbreak of such disease or the spread thereof.”<sup>4</sup>*

With regards to the DMA, Section 38(1) states the following:

*“38 State Government to take measures. –*

*(1) Subject to the provisions of this Act, each State Government shall take all measures specified in the guidelines laid down by the National Authority and such further measures as it deems necessary or expedient, for the purpose of disaster management.”<sup>5</sup>*

As is evident from the above provisions, the state government is entitled to make any rules/regulations as it deems fit to prevent the spread of an infectious disease. This power was exercised by the DDMA on 8th April 2020, as it issued an order. Excerpts that are essential to the present case are given below:

- All persons moving for whatsoever purpose and under whatever reason/authority in public places, like street, hospital, office, and markets must wear a 3-ply mask or cloth mask compulsorily.
- Any person moving around in his personal and official vehicle must be wearing their masks compulsorily.

The operative portion of the June notification concerning the case stated the following:

*“Authorized Persons shall be empowered to impose a fine of Rs. 500/- for the first time and a further fine of Rs. 1000/- for the repeated offense, respectively for violating the directives/guidelines pertaining to the following: - a. Observation of quarantine rules. b. Maintaining social distancing, c. Wearing of Face mask/cover in all public places /workplaces.”*

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<sup>4</sup> Epidemic Diseases Act, 1897, s 2

<sup>5</sup> Disaster Management Act, 2005, s 38(1)

## ANALYSIS AND JUDGEMENT

An examination of the first issue, namely whether it was mandatory for individuals traveling alone in a vehicle to wear a mask or not, requires a perusal of the relevant rules prevalent at the time. As seen from above, it is an indisputable fact that the state government and the various ministries and departments under its aegis are fully authorized to make relevant rules. This authority flows from Section 2 of the EDA and Section 38 of the DMA. Once this authority is established, the rules and regulations released under the exercise of such authority become valid and applicable. The reason behind wearing a face mask is to essentially prevent and reduce the spread of disease. In an attempt to achieve this overarching goal, the Regulations, 2020 made it compulsory to wear a mask in a ‘public space’. The second issue which continued from the first issue was a dispute over the language of two subsequent orders. As stated above, the April Order stated a compulsion to wear a mask inside a vehicle. This was an issue, as it was not mentioned explicitly whether it was necessary to wear a mask while traveling alone in a vehicle. The June Order, however, mentioned that a fine would be imposed if a person was caught not wearing a mask in a ‘public space’. In this context, it becomes important to understand whether a vehicle (in which a single person is traveling) falls under the purview of a ‘public space’. A judgment of the Supreme Court, namely in the case of *Satvinder Singh v The State of Bihar* becomes important.<sup>6</sup> Without delving into the facts of the case, as the facts are not in pari materia with the present case, it is imperative to understand the ratio decidendi of the judgment. Just like the petitioners of the current case, the petitioners in the case of *Satvinder Singh* argued that their vehicle should not be considered a ‘public place’.

However, a two-judge bench of the Supreme Court held that “the private vehicle of the appellants was intercepted when it was on the public road. When a private vehicle is passing through a public road it cannot be accepted that the public has no access. It is true that the public may not have access to the private vehicle as a matter of right but definitely, the public has the opportunity to approach the private vehicle while it is on the public road. Hence, we

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<sup>6</sup> *Satvinder Singh Saluja & Ors. v The State of Bihar* (2019)

are not able to accept the submission that the vehicle in which appellants are traveling is not covered by the definition of 'public place'.<sup>7</sup> Moreover, in the case of *Gaurav Jain v Union of India*,<sup>8</sup> the Supreme Court held that 'a public place' need not be public property, but could even be a private property to which the public has access. A larger context of the situation also plays an important role in deciding whether a place could be considered 'a public place' or not. This was held by the Kerala High Court in the case of *Malathi v State of Kerala*.<sup>9</sup>

Regarding the wider context of the COVID-19 Pandemic, it is but a foregone conclusion that the virus can transmit through a vehicle in which a single individual is traveling if mask compliance is not present. This is exactly what was held by the judgment of the Delhi High Court, wherein Justice Pratibha Singh stated "*A person traveling in a vehicle or car even if he is alone, could be exposed to the virus in various ways... If a person is traveling in the car alone, the said status is not a permanent one. It is merely a temporary phase. There could be other occupants in the car before the said phase and post the said phase... The droplets carrying the virus can infect others even after a few hours after the occupant of the car has released the same. There are several possibilities in which while sitting alone in the car one could be exposed to the outside world. Thus, it cannot be said that merely because the person is traveling alone in a car, the car would not be a public place.*" In addition to this, Justice Singh eloquently stated how a mask must be considered as "Suraksha kavach" for preventing the spread of the coronavirus and the fact that its use has saved "millions of lives."<sup>10</sup> As a result, the petition was rightfully dismissed by the High Court as it was based on no merit. As is mentioned in the judgment, non-compliance should not have been made an ego issue and the necessary orders of the government should have been followed as it was the responsibility of every citizen towards each other in such trying times.

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<sup>7</sup> *Ibid*

<sup>8</sup> *Gaurav Jain v Union of India* AIR 1997, SC 3021

<sup>9</sup> *Malathi v State of Kerala* (2020)

<sup>10</sup> Sofi Ahsan, 'Wearing masks in vehicle compulsory, even when travelling alone' (*The Indian Express*, 7 April 2021) <<https://indianexpress.com/article/cities/delhi/wearing-masks-in-vehicles-compulsory-even-when-travelling-alone-delhi-high-court-7262346/>> 20 February 2022

## POST-JUDGMENT CHANGES: ANALYSIS

In February 2022, the Delhi Government announced that it would no longer be mandatory for people to wear masks while traveling inside a private or commercial vehicle.<sup>11</sup> This decision was taken after a two-judge bench of the Delhi High Court rebuked the government on the regulation. The High Court was hearing arguments from government counsel Deepak Mehra, who submitted that certain regulations need to be revisited, stating “Pandemic is almost over. All those days when this was probably the right thing to do is not the right thing to do now. This relaxation must come in.”<sup>12</sup> Pursuant to this, the two-judge bench asked “*Why is this order still prevailing? It is absurd actually. You’re sitting in your own car and you must wear a mask?*”<sup>13</sup> The argument of the government counsel is partly fallacious, as stating that the ‘pandemic is almost over’ can prove to have a detrimental impact on the general public’s psyche to mask-wearing and following COVID-19 Protocols. Indeed, specific relaxations must come as the situation ebbs and flows, the importance of wearing masks and following appropriate behavior should not be undermined. It has been asserted worldwide, that the wearing of masks has the potential to save lives.<sup>14</sup>

## CONCLUSION

The judgment of the single judge bench imposing fines for non-compliance with government regulations was based on merits, in the larger context of the situation prevalent in 2020. It must be noted that in 2020, very little was known about the coronavirus, which is why it was safer to err on the side of caution and impose strict rules, accompanied by fines for a deterrent effect. In 2022, much water has passed under the proverbial bridge, greater knowledge and information is now in the public realm regarding the coronavirus. In addition to this, as much

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<sup>11</sup> ‘Now, no more fines in Delhi for not wearing masks if you’re alone in your car’ (*The Indian Express*, 5 February 2022) <<https://indianexpress.com/article/cities/delhi/ddma-covid-19-fines-delhi-car-masks-7758118/>> accessed 20 February 2022

<sup>12</sup> Sofi Ahsan ‘It is absurd, says Delhi HC’ (*The Indian Express*, 1 February 2022) <<https://indianexpress.com/article/cities/delhi/absurd-delhi-hc-on-govt-order-mandating-masks-inside-car-7751594/>> accessed 20 February 2022

<sup>13</sup> *Ibid*

<sup>14</sup> Robert Shmerling, ‘Masks saves lives: Here’s what you need to know’ (*Harvard Health Publishing*, 15 January 2022) <<https://www.health.harvard.edu/blog/masks-sturnave-lives-heres-what-you-need-to-know-2020111921466>> accessed 20 February 2022

as 80% of India's adult population is fully vaccinated<sup>15</sup>, which provides an added layer of protection against severe disease. Moreover, pandemic fatigue too has set in amongst the populace, which demands moderation as well. Such meteoric changes have led to a withdrawal of the regulations regarding the wearing of a mask inside a vehicle. This decision should be taken optimistically, with the hope that in the coming times, more relaxations set in as the pandemic ebbs away and life returns to a 'pre-COVID normal'. In the meanwhile "Caution is the eldest child of wisdom" is a saying by Victor Hugo, which must be kept in mind to ensure safety, as we maneuver through the labyrinth of problems that the pandemic poses.

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<sup>15</sup> 'Coronavirus updates' (*The Hindu*, 27 February 2022)  
<<https://www.thehindu.com/news/national/coronavirus-live-updates-february-27-2022-live-updates/article65089597.ece>> accessed 27 February 2022