

Order below Exhibit -1

1. Gone through the chargesheet and the relevant documents filed along with the same. The accused is booked under section 188 of the Indian Penal code and other offences for alleged breach of the order promulgated by the Collector/Additional Collector of the district in respect of various guidelines issued by the Central and State Government for curbing the ongoing spread of the Novel Covid-19 virus across the country and for taking necessary measures for the same. With the ulterior motive of restraining the wide spread of the virus and taking into contemplation various standard operating procedures prescribed by the Governments and other administrative bodies, various orders were promulgated by collector/Additional Collector under section 144 of the Code of Criminal Procedure. The present case has been filed against the accused complaining the breach of one of such orders.

2. Before going into the merits of the case and before proceeding with the trial of the case. It is desirable to see as to whether such a complain is maintainable in the present form that is in the form of a chargesheet? Here, the court has to see the provision of section 195 of the Code of Criminal Procedure which talks about taking of cognizance by the court for the offences punishable under sections 172 to 188 of the Indian Penal Code. Relevant part of section 195 of the Code of Criminal Procedure is as under :

Section 195 (1) No court shall take cognizance-

(a)(i) of any offence punishable under sections 172 to 188 (both Inclusive) of the Indian Penal code. ,

(ii) of any abetment of , or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except to the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(3) In the case of *Daulat Ram Versus State of Punjab 1962*, Hon'ble Supreme court examined the scope of section 195 Cr.P.C and held that as per section 195 of the Code of Criminal Procedure complaint must be in writing by the public servant concerned and if there is no compliance of this section then the trial was without

jurisdiction and the conviction cannot be maintained. Further, in the case *Kanjibhai Versus State*, Hon'ble Gujarat High held that, as per section 195 Cr.P.C complaint by the concerned public servant is the sine qua non for initiating the proceedings of offence under sections 172 to 188 of I.P.C against the accused and if there is no complaint of concerned public servant cognizance taken by court is bad in law. Only commissioner whose proclamation order is violated or the officer to whom he is administratively subordinate can file the written complaint and in absence of this procedure the courts have no power to take cognizance on chargesheet. In the case of *Goverdhankumar Thakordas Asrani versus State of Gujarat 2018 (1) G.L.H.63*, Hon'ble Gujarat high court in para 39 has held as under:

" it is true that section 195 of the code does not bar the trial of an accused for a distinct offence disclosed by the same set of facts and is not so stated therein. section 195 also does not provide further that if in the course of the commission of that offence, the other distinct offences are committed, the court concerned is debarred from taking cognizance in respect of those offences as well. However, if the perusal of first information report and other papers of the chargesheet makes it clear that the offence under section 186 or section 188 of the IPC, as the case may be, is closely interconnected with the other distinct offences and cannot be split up, then , in such circumstances, the bar of section 195 of the Cr.P.C will apply to such other distinct offences also."

In the case of *Mohmadmohsin Mohmadirfan Chhalotiya versus state of Gujarat*, in Special Criminal Application no.4105 of 2017 dated, 15/02/2019, the Hon'ble Gujarat High court held as under:

"(18) The conceptus of the afore-mentioned judgments establishes the following parameters:

- (a) There is no bar of taking cognizance under section 195(1) (a) of the Cr.P.C. if the offences are seprate and distinct having different ingredients and characteristics from those contained in section 195(1) (a) of the Cr. P.C;
- (b) Bar of taking cognizance under section 195 of the Cr.P.C will apply if the offences cannot be segregated and they form integral part;
- (c) The offences must be committed as a part of the same transaction;
- (d) Such offences can be segregated on the basis of element of public justice(viz. offences occurring in chapter-X of the Cr.P.C) and

personal element (viz offences under chapter-XVI of the Cr.P.C) though committed as a part of the same transaction. If the personal element largely predominates, such offence can be taken cognizance without a written complaint. "

(4) Hence, taking into consideration in all above mentioned cases and the principle laid down in them, this court is of the view that the bar of section 195(1) (a) of the Code of Criminal Procedure will apply in such case where the other offences are of such a kind that it is not possible to segregate the offence committed under section 188 and other distinct offences. If the bar contained in section 195(1) (a) is applicable then it is not permissible to initiate proceedings against the person on the basis of charge-sheet filed. In such a case there has to be a written complaint by the person who promulgated the said order or the person to whom he is administratively subordinate. Here, looking to the facts mentioned in the first information report and the charge-sheet filed, it shows that the investigating officer has complained about one single act of the accused which is alleged to be a breach of the order promulgated by the collector/Additional collector. It is not the case of the investigating officer that the accused had, in the course of commission of an offence, which is breach of the order promulgated by the collector/additional collector, committed other distinct offences. Hence, in such a situation it is not possible to segregate other offences from the offence punishable under section 188 of the Indian Penal Code. Therefore, at the conclusion of the above discussions this court passes the following order.

Final Order

- The proceeding of the present case is hereby stopped under section 258 of the Code of Criminal Procedure.
- As the trial of the case has not yet been initiated, the accused is Discharged.

Pronounced in the open court today on 10th of July, 2021 in the special sitting of Magistrates organised on the day of National Lok Adalat.

Anubhav Pandey
2nd Addl. Chief Judicial Magistrate
Siddhpur, Patan
Code: GJ01133