

ORDER BELOW EX.1 IN CRIMINAL CASE NO. 57762/2021

1. The short facts of the complainant's case are that the accused of this case is involved in the offences registered against him before Thorala Police Station for the offence punishable under Secs. 188 of Indian Penal code After completion of investigation, Police has submitted charge sheet against him before this Court.
2. The Hon'ble Bombay High Court (Nagpur Bench) in Criminal Appeal No.453/2020 in the case of Applicant No.1 HLA Shwe and others Vs. Non-Applicant-State of Maharashtra through Police Station Nagpur, the Hon'ble Mr.Justice V. S. Despande and Hon'ble Mr. Justice Amit Borkar in Criminal Appeal No.453/2020 held in para 24 to 26 as under:-

“24. Having considered the ambit and scope of Section 195(1) of the Code and the ratio laid down by the Supreme Court referred to herein above, we are of the opinion that the investigating authorities acted without jurisdiction in registering the F.I.R. under Section 188 of the Indian Penal Code based on a complaint of police. The investigation conducted by the police was also without jurisdiction.

25. Having regard to the facts involved in the present case and the ratio laid down by the Supreme Court in respect of the exercise of power under Section 482 of the Code in the decisions, noted above, we are of the opinion that allowing the prosecution to continue would be nothing but an abuse of the process of the Court in as much as there was an express legal bar against the institution of F.I.R. against an accused based on the police report.

26. In the backdrop of the exposition of the aforesaid position, we are of the considered view that the implication of the applicants herein for the offences punishable under Sections 188 of the Indian Penal Code and Section 14 of the Foreigners Act, Section 3 of the Epidemic Disease Act, 1987 and Section 51 of the Disaster Management Act, 2005 would be an abuse of process of law. Compelling the applicants to undergo the trial would cause grave injustice. We, therefore, deem it appropriate to quash the F.I.R. bearing No. 178/2020 and charge-sheet bearing registration No. 6076/2020 before the Judicial Magistrate, First Class, Nagpur.”

Further Hon' ble Gujarat High Court in PARSHOTAMBHAI ODHAVJIBHAI SOLANKI Vs STATE OF GUJARAT & 1 othar(s) R/CRIMINAL MISC. APPLICATION NO. 31264 of 2016 Date : 04/11/2020 has held that "The offence under sections 120B, 171D and 188 of IPC are alleged to have been committed as a part of the same

transaction but the said sections cannot be segregated on the basis of offences occurring in Chapters X & XVI of the Cr.P.C. Hence, for the alleged offences in this case, the Magisterial Court could not have taken cognizance without a written complaint from the competent authority."

In *Goverdhankumar Thakordas Asrani Vs. State of Gujarat* 2018(1) G.L.H. 63, it has been held that 39 "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 the first information report and other papers of the charge-sheet 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."

The above ratio has been upheld in following cases as well

- [1] *Durgacharan Naik Vs State of Orissa*,
1966 Cri LJ 1491 : AIR 1966 SC 1775
- [2] *Basir Ulhaq Vs State of W.B.*
1953 Cri LJ 1232 : AIR 1953 SC 293;
- [3] *Oduvil Devaki Amma Vs State of Kerala*
1981 KLT 475 : 1982 Cri LJ (NOC) II (Ker);

It appears from the record of the instant case that the investigating authorities have acted without jurisdiction in registering the F.I.R. under section 188 of the Indian Penal Code based on a complaint of police. It also appears from the record that in the present case also police has conducted the investigation without jurisdiction. So, considering the ratio laid down in the above judgment, it would be an abuse of process of law to continue proceedings against the accused under Sec.188 of IPC and therefore, it is hereby ordered to drop the proceedings against the accused as per sec. 258 Cr.P.C.

Pronounced in open Court to day on this 12th day of March 2022 at
Rajkot

RAJKOT

Dt. 12/03/2022

Judi. Magi. F. C. (Traffic)
RAJKOT