

Order below Exh. 1

1. This is a report filed by Sarkarwada Police Station through a police head constable alleging offence punishable under section 188 of the Indian Penal Code, 1960, section 3 of the Epidemic Diseases Act and section 51 of the Disaster Management Act, 2005. The accusations made against the accused are that he committed breach of the directions/order dated 17/05/2020 issued by the Police Commissioner, Nashik, in order to control outbreak of Covid-19 pandemic.

2. However, it is worth here to mention that the section 188 of Indian Penal Code is cognizable. But, as per section 195 (1)(a) of the Code, Court shall not take cognizance unless and until the complaint is filed by public servant or his administrative sub-ordinate. Wherein it is needless to mention that in the case of *HLA Shwe Vs. State of Maharashtra [(2021) 1 AIR Bom R (Cri) 47]* The Hon'ble Bombay High Court has also made observation that cognizance of the offence punishable u/s 188 of Indian Penal Code can not be taken on the basis of report in NC form.

3. Another facet is that section 3(A) of the Epidemic Diseases Act, is cognizable and non-bailable. But, further requires it should be investigated by the Police Officer not below the rank of Inspector. However, in the present case, neither the F.I.R. is registered nor investigation is done as mentioned supra. Further, perusal depict that police machinery has at all not followed the mandate of section 51(a)(b) and 60 of Disaster Management Act, 2005. There is total disregard of section 60 of Disaster Management Act. Hence, the accusations made therein are non-cognizable in nature in view of section 2(d) and section 2(r) of Code of Criminal Procedure. In such contingency, report filed in the present case in such form can not be taken as a complaint. While, filing these cases police machinery has totally shown disregard towards the precedural mandate of CrPC. Hence, there is no situation to take cognizance of this report under section 190 of CrPC as such. In such contingency, the only mode available to deal with such cases is to stop proceeding under section 258 of CrPC. Hence, considering the discussion supra, I think this is a fit case for stopping proceeding. Accordingly, the following order is passed.

ORDER

1. The proceeding is stopped under section 258 of the Code of Criminal Procedure, 1973.
2. The accused is released which shall have effect of discharge as per section 258 of the Code of Criminal Procedure.

Place: Nashik
Date : 23/09/2021

sd/xxx
(P.V. Hingne)
Addl. Chief Judicial Magistrate
Nashik.