

ORDER BELOW EX.1

1. Investigating Officer [**In short 'I.O'**] has filed the Chargesheet against the accused **u/S. 188, 269 & 270 of the Indian Penal Code, 1860 [in short 'I.P. Code']** and under **Sec.3 of the Epidemic Diseases Act, 1897 [in short 'E.D.Act'] & u/Sec.51-b of the Disaster Management Act, 2005 [in short 'D.M. Act']** on the basis of First Information Report. I.O. has filed the Chargesheet on the ground that accused violated the term of promulgation issued by the District Magistrate and breached the guidelines of the Central Govt. & committed the above crime.
2. This Court has also given ample opportunity to the Ld.APP for the State and the Ld.APP has relied upon the judgment in the case of *Pankaj Agarwal vs. State of Delhi, SC, case No.259-2001, dtd.12-03-2001*.
3. On perusal of papers, it transpires that two questions fall for my consideration, viz.
 1. Whether this Court is empowered to take cognizance of case as no any complaint has been filed by the authorised officer ?
 2. Whether the alleged offences can be split up or said to be distinct ?

Question No.1 :-

4. Sec.195 of the Code of Criminal Procedure, 1973 [in short 'Cr.P.C.'] provides that **no Court shall take cognizance** of offence punishable under Section 172 to 188 (Inclusive of both Sections) of the Indian Penal Code, 1860 except on the Complaint in writing of the Public Servant concerned or of some other Public Servant to whom he/she is administratively subordinate.
5. In *Daulat Ram v/s. State of Punjab, 1962 AIR SC 1206*, Hon'ble Supreme Court described the scope of Sec.195 of the Cr.P.C. and held that as per Sec 195 of the Code of Criminal Procedure, 1973, the Complaint must be in writing by the Public Servant concerned and if, there is no compliance of this provision then the trial would be without jurisdiction and the conviction cannot be maintained.
6. In *M.S. Ahlawat v. State of Haryana, AIR 2000 SC 168*, it is held that "...Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section."
7. In *Kanjibhai v/s. State on 16 th March, 2010, Criminal Misc. Application No.348 of 1995*, our own Hon'ble High Court of Gujarat held in Para-7 that,
"In view of the provisions of Sub-Section (1) of Section 195, which expressly bars taking of cognizance of an offence under Section 188 except as provided thereunder, read with Section 2(d) of the Code, it was not permissible for the learned Judicial Magistrate to take cognizance of the offence in question on the basis of a Chargesheet filed pursuant to the First Information Report lodged by the Respondent No.2. In light of the provision of Section 195(1)(a), the Court could not have taken cognizance of the offence under Section 188 of the Indian Penal Code, 1860 except on a Complaint in writing by the Public Servant concerned or some other Public Servant to whom he/she is administratively subordinate."
8. The Hon'ble Gujarat High Court in Cri. Misc. Appln. No.23009 of 2015 Nayan Harishbhai Kankhara vs. State of Gujarat, dtd.18.12.2015 held in para 11 that

"I may also quote the decision of the Supreme Court in the case of State of Karnataka vs. Hemareddy & Anr., AIR 1981 SC 1417 wherein the Supreme Court observed in para-8 as under;

"We agree with the view expressed by the learned Judge and hold that In cases where in the course of the same transaction an offence for which no complaint by a Court is necessary under Section 195 (1) (b) of the Code of Criminal Procedure and an offence for which a complaint of a Court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in S. 195 (1) (b) of the Code of Criminal Procedure should. be upheld."

9. Hence, except written complaint by the concerned, this Court is not empowered to take cognizance of case u/S.188 of the I.P. Code.
10. In the same way, other offence is u/S.51(b) of the D.M. Act and as per allegation of the prosecution case, the accused has violated the guidelines as made in the Order of the Central Govt., u/S.51 of the D.M. Act, which is as under :-

51. Punishment for obstruction, etc.-

—(1) Whoever, without reasonable cause—

(a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b). refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years

11. At this juncture, an attention of this Court towards the Sec.60 is drawn :

60. Cognizance of offences.-

No court shall take cognizance of an offence under this Act except on a complaint made by-

a. the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or

b. any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid."

12. Thus, no any compliance is made to the above-cited provision, which is a mandatory nature. Hence, cognizance against the Sec.51-b of the D.M. Act can not be taken.

Other offence is u/S.3 of the E.D. Act is levelled, which is verbatim as under :-

3. Penalty. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).

13. Thus, Sec.3 of the E.D. Act is nothing but deeming part of offence made u/S.188 of I.P.C. and for cognizance of Sec.188 of I.P.C., complaint must be there, which is not in the present case. Hence, cognizance against the Sec.3 of E.D. Act can not be taken. *Whereas* judgment as relied by the Ld.APP for the State in the case of Pankaj Agarwal vs. State of Delhi, SC is concerned, in that case applicant-accused was charged with Ss.186, 332 & 353 r/w.34 of I.P.C. and the cognizance was take by the Magisrial Court, hence, the applicant-accused reached High Court but be unsuccessful. Lastly, reached to the Hon'ble Apex Court, wherein it is held that cognizance qua the Sec.186 can not be taken, but rest of the sections, there is no any bar. Hence, this judgment is helpful to this Court whereby it is reiterated that cognizance is barred under such offence likewise in our case.

14. Hence, this Court is not empowered to take cognizance of case as no any complaint has been filed by the authorised officer. Hence, my answer to question No.1 is in '**Negative**'.

Question No.2 :-

15. This brings me to the second question that whether the alleged offences can be split up ? To answer this question, I may quote the relevant observations made in the judgment in the case of Govardhankumar Thakoredas Asrani V. State of Gujarat, Sp.Cri.Appli.No.2544/2015,D.13.04.2017, which is as under:

40.2) In the case of State of Karnataka vs. Hemareddy, AIR 1981 SC 1417, the Supreme Court held that in the cases where in the course of the same transaction, an offence, for which, no complaint by a court is necessary under section 195(1)(b) of the Cr.P.C., and an offence, for which, a complaint of a Court is necessary under that sub-section are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in section 195(1)(b), Cr.P.C., should be upheld.

16. In *Merubhai Mandanbhai Chandra V. State of Gujarat* The Hon'ble Gujarat High Court in Cr.M.A. No.17286/ 2017, It is held in para-6 that,

"Mr. Dave, the learned counsel would submit that the chargesheet is also filed for the offence punishable under Section 504 of the I.P.C. Section 504 of the I.P.C. is not to be found in Section 195 of the Cr.P.C., and therefore, it would be within the powers of the Magistrate concerned to take cognizance of the offence punishable under Section 504 of the I.P.C. I am afraid it is not permissible for this Court to accept the settlement. This aspect has also been well considered by me in the decision referred to above. In the facts of this case, it is not possible to separate the offence punishable under Section 186 with Section 504 of the I.P.C. Both the offences could be said to have been committed in the course of one transaction. If it is not permissible for this Court to split the offences, then the bar of Section 195 of Cr.P.C. would apply even those offences of the I.P.C. which are not falling within the ambit of Section 195 of the Cr.P.C."

17. Considering and applying the above ratio in this case, as per the prosecution case, the accused has violated the order of public officer which is fallen in S.188 of IPC and unlawfully or negligently did act which was, and which he knows or has reason to believe to be, likely to spread the infection of dangerous disease to life, i.e. Covid-19 [Sec. 269]. Thus, the alleged act was done by the accused in pursuance to that breach of the order of the public servant. Meaning thereby, both the acts can not be segregated from each other, hence they are not distinct nor can be split.

18. In the same way, other offence u/S.270 of the I.P.C is levelled and as per that offence, who malignantly acted which was, and which he knows or has reason to believe to be, likely to

spread the infection of Covide-19 [Sec.270]. Thus, the alleged act was done by the accused in pursuance to that breach of the order of the public servant. Meaning thereby, both these acts can not be segregated from each other, hence they are not distinct nor can be splited.

19. Further, recently on dtd.21-09-2020, in the case of **HLA SHWE VS. STATE OF MAHARASHTRA, Cr.Appln. No.453-2020, the Hon'ble High Court of Bombay Nagpur Bench [DB] has quashed the charge-sheet against the accused u/S.269, 270 of I.P.C and Sec.51 of D.M.Act & Sec.3 of the Epidemic Diseases Act, 1987 & Sec.14 of the Foreign Act, on relying the provision of Sec.195(1)a of the Cr.P.C.**

20. Looking to the facts and circumstances, those alleged offences are insepratable and can not be splited. So the answer of question No.2 is also in '**Negative**'.

21. In light of the afore noted decisions and as per the ratio laid down in the Case of *K. Prabhakar Rao v/s. State of A. P., decided on 25/11/2014* by the Hon'ble Apex Court, the proceeding of the present Criminal Case should be stopped under S.258 of CrPC on afore said ground. Hence, in view of my anwer to question No.1 and legal settled proposition, following order is passed in the interest of justice :

ORDER

- 1) Proceedings of the present case is hereby ordered to stopped u/S.258 of the Cr.P.C.due to bar in taking cognizance u/S.195(1)(a) of the Cr.P.C. and thereby the accused of the present case is discharged.
- 2) Bail & bond be treated u/S.437-A of the Cr.P.C. for the next 6 months and thereafter, it stands cancelled.
- 3) The Muddamal if any seized by the authorities in this case, is hereby ordered to dispose of as per the provisions of criminal manual.

Pronounced in the Open Court today.

Dt. 11-12-2021
LATHI
Spl.Sitting

[BAKULKUMAR NATVARLAL DAVE]
Judicial Magistrate Fist Class,Lathi
Code GJ01272