

Criminal Case No.5653/2020

Order Below Exh.1

- 1) Read the chargesheet & police papers.
- 2) Looking at the case papers it is evident that the FIR was filed under Indian Penal code section 186, 504, 506 and GP Act-135 on the basis of the same charge sheet was filed before court. Lookin at Section 195 of the Criminal Procedure Code prescribes that no court shall take cognizance of offence punishable under sections 172 to 188 of Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. In the present case no such procedure was followed straight away FIR was filed and on the basis of that charge sheet was filed.
- 3) Hon'ble Calcutta High Court in the case of **Aft. Lachmi Devi V. Emperor** through Rankin C.J. Held that Section 195 of the Criminal Procedure Code prescribes that no court shall take cognizance of offence punishable under sections 172 to 188 of Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. It would not be possible to prosecute a person on the basis of 'police report' even when the offence has been made cognizable without complying with the provisions enumerated in section 195(1)(a).
- 4) In **Daulat Ram vs State Of Punjab 1962 AIR 1206**, Hon'ble Supreme Court described the scope of Section 195 Cr.P.C and held that as per section 195 Cr.P.C. a 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.
- 5) In **Kanjibhai v/s. State on 16 March, 2010. Criminal Misc. Application no.348 of 1995**, Hon'ble Gujarat High Court 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 First Class to take

cognizance of the offence in question on the basis of a charge-sheet filed pursuant to the first information report lodged by the respondent No.2. In the light of the provisions of section 195(1)(a), the Court could not have taken cognizance of the offence under section 188 IPC except on a complaint in writing by the public servant concerned or some other public servant to whom he is administratively subordinate.

- 6) In **SHAHIDKHAN VAHIDKHAN PATHAN Versus STATE OF GUJARAT, in R/CRIMINAL MISC.APPLICATION NO. 17473 of 2020 Date : 14/06/2021**, Hon'ble HIGH COURT OF GUJARAT has held that " It would be further pertinent to mention that in the instant impugned complaint the only offence that is alleged is under Section 188 of the Indian Penal Code. Thus in view of the ratio laid down by the Supreme Court in *Saloni Arora vs. State (NCT of Delhi)* (supra) it appears that since the procedure prescribed under Section 195 of the Code had not been followed, the complaint against the applicants herein is rendered void ab initio.
- 7) Words used in the section 195 connotes the meaning that the complainant may be the person who has promulgated the order or any person who is administratively senior to him thus the subordinate here is used in the context of administratively superior officer.
- 8) If the courts have taken the cognizance of offence punishable from section 172 to 188 of IPC without complying without the mandatory requirement of section 195 of Cr.P.C. then courts are supposed to be guided by the ratio laid down in **n Gaurishanker Jha v/s. Chintanath Jha, 1991 (39) BLJR 1167**, Hon'ble Patna High Court held that if it appears that when the cognizance has been taken and the defect of want of jurisdiction or absence of sanction crops up, then the court should not proceed with the trial. If witnesses have been produced by both sides when a court has no jurisdiction or there is inherent want of sanction, the prosecution becomes bad, illegal and without jurisdiction. All proceedings are to be dropped or complaint has to be dismissed but definitely no order of acquittal or discharge can be passed.
- 9) Hon'ble Gujarat High court in case of **Nayan Hareshbhai Khankhara vs State of Gujarat in Criminal Misc. Application no.23009 of 2015**

that it is not permissible to split the offences when all the offences have committed in the same transaction and in such a situation embargo of CrPC 195 is applicable even if FIR was registered under Indian Penal Code section 186 along with different sections and offences.

10) As per the above discussion it is pertinent to note that no complaint was filed before court directly FIR was registered and then after directly charge sheet was filed. It is also evident that all the allegations in respect to offence alleged under Indian Penal code section 504, 506(2) and 114 and Indian Penal code section 186 are of the same transaction hence it is not permissible to split offences or take as a separate offence. Hence in such circumstances it is clear that the embargo of section 195 of CrPC is there. Hence this court has no power to take cognizance and cognizance if taken then to proceed with the matter and to convict or acquit the accused in spite of lack of jurisdiction is bad in law. In the similar way if an accused is acquitted or discharged on the basis of the ground that court has no jurisdiction to take cognizance then this will curtail the right of prosecution to file fresh proceedings as per procedure prescribed by law. In view of this, to proceed with this matter is not justified by law. Hence the following order is passed.

11) Upon the discussion of following provisions of law & judgments propounded by the Apex court & various Hon'ble High Courts, in the interest of justice following final order is passed.

Final Order

The proceeding against the accused is hereby dropped without the effect as to acquittal or discharge the accused with a liberty to the prosecution to file complaint before court as per the provisions of law.

Signed and pronounced in the open court at Rajkot.

Date :- 13/05/2023

Place:- Rajkot

(Ms.Vintee)

2nd Addi.Civil Judge &

J.M.F.C. Rajkot

UIC Code GJ15550