
Criminal Case No.2739/2021

Order below Exh.1

1. Perused the record. In this Case the Investigating Agency filed the Charge-sheet against the accused for commission of an offence under Section 188 of the Indian Penal Code, 1860, on the basis of First Information Report lodged against the accused. On perusing the record it appears that the Investigation Agency filed the Charge-sheet on the ground that accused violated the term of promulgation issued by the Police Commissioner, and committed the crime under Section 188 of the Indian Penal Code, 1860.
2. Therefore, prior to issuance of the summons against the accused and at the stage of taking the cognizance, it is required to be taken into consideration that whether this Court is empowered to take cognizance or not and for that this Court finds it pertinent to discuss Section 195 (1) of the Code of Criminal Procedure, 1973.

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 (45 of 1860), or (ii) of any abetment of, or attempt to commit, such offence, or (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;" Therefore, while considering

the provisions as envisaged under Section 195(1) of the Code of Criminal Procedure, it is clearly envisaged that no Court shall take cognizance of the offence punishable under Section 172 to 188 (inclusive of both) of Indian Penal Code, 1860 save and except on the written complaint of the public servant or of some other public servant to whom he is administratively subordinate. Further, while on plain reading of the provisions as envisaged under Section 195 of the Code of Criminal Procedure, the term "complaint" is to be considered as defined under Section 2 (d) of the Code of Criminal Procedure, which is as: *"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*

Explanation:- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

Therefore, after considering the definition as defined regarding the term "complaint" under Section 2 (d) of the Code of Criminal Procedure, it is crystal clear that the report of the police does not fall under the ambit of term "complaint" as defined under Section 2(d) of the Code of Criminal Procedure. Therefore, considering the above facts, it is crystal clear that there is bar to take cognizance if the

provisions of section 195 of The Code of Criminal Procedure, 1973 are not complied with.

3. In Daulat Ram v/s. State of Punjab, 1962 AIR 1206, Hon'ble Supreme Court described the scope of Section 195 of the Code of Criminal Procedure, 1973 and held that as per Section 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.

In Gaurishankar Jha v/s. Chintanath Jha, 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, Witness 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.

In Kanjibhai v/s. State on 16th March, 2010, Criminal Misc. Application No.348 of 1995, 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 Charge-sheet 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.

In *Arvind Kejriwal & Ors. v/s. Amit Sibal & Anr.*, Criminal Misc. Application No.18920-21/2013, it was held by the Hon'ble Delhi High Court that, if, the Trial Court proceeds to drop the proceedings qua petitioners, then the Apex Court's decision in *Adalat Prasad v/s. Rooplal Jindal and Ors.* (2004) 7 SCC 338 would not stand in the way of Trial Court to do so.

As per the ratio laid down in the case of *P. D. Lakhani & Anr. v/s. State of Punjab & Ors.* Reported in AIR 2008 SC (Supp) 1825, the Hon'ble Apex Court has observed that a cursory reading of Section 195(1)(a) makes out that in case a Public Servant concerned who has promulgated an Order which has not been obeyed or which has been disobeyed, does not prefer to give a Complaint or refuses to give a Complaint then it is open to the Superior Public Servant to whom the Officer who initially passed of the Order promulgated by his subordinate. The Said decision is squarely applicable to the facts of

the present Case.

In light of the abovementioned 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, following order is passed in the interest of justice :

ORDER

- (1) The cognizance of the above stated offence cannot be taken on the charge sheet/police report filed under Section 173 of Cr.P.C. and hence present case is hereby disposed of.
- (2) It is open on the part of the State to file fresh proceedings against the accused after compliance to requirement of Section 195(1)(a) of Cr.P.C. subject to the provisions of Chapter XXXVI of Cr.P.C. 1973.

Pronounced in Open Court today in Special Sitting of Magistrates in National Lok Adalat on 11th of September, 2021

Date: 11/09/2021

[**Abhinav Mudgal**]

Place: Botad

Judicial Magistrate First Class

Botad