

Order below Exh. 01.

1... The police has filed Chargesheet against the accused for the offence punishable u/s.188 of the IPC and other offences. As per Section 195 of the CrPC, the complainant is required to file the complaint as defined in Section 2(d) of the Code, and as per the definition of the complaint, the police report is specifically excluded. In the instant case, the police has filed the Chargesheet, and not the complaint as defined u/s.2(d). Therefore, the cognizance on basis of the Chargesheet is specifically barred. I have taken into consideration the ratios laid down by Hon'ble the Apex Court and Hon'ble the Gujarat High Court in the cases of (1) Kanjibhai Babaldas Patel vs. State of Gujarat - CrMA No.348/1995, (2) Govardhankumar Thakoredas Asrani vs. State of Gujarat - 2018(1) GLH 63, (3) C.Muniappan vs. State of Tamil Nadu - (2010)9 SCC 567, (4) M. S. Ahlawat vs. State of Haryana - AIR 2000 SC 168, (5) Daulat Ram vs. State of Punjab - AIR 1962 SC 1206, (6) Babita Lila vs. Union of India - AIR 2016 SC 4061, (7) Bechar Vala vs. State of Gujarat - 2002 eGLR_HC 10005365, (8) Arundhati Bhattacharya vs. State of Gujarat - Cr.M.A.No.12818/2014, (9) Merubhai Mandanbhai Chandra vs. State of Gujarat Cr.M.A.No.17286/2017, and (10) Shahidkhan Vahidkhan Pathan vs. State of Gujarat - CrMA No.17473/2020. In all these cases, Hon'ble Superior Courts have laid down the ratio, by and large, in these words: The Provisions of Section 195 of the Code are mandatory in nature and non-compliance thereof would vitiate the prosecution and all the consequential orders; that only the complaint as defined u/s.2(d) is tenable and not the Chargesheet. Moreover, if the offences falling under the purview of Section 195 of the Code and other penal provisions are not able to be separated, the cognizance of such other penal offences on the basis of the Chargesheet, is also barred. Therefore, this Court has no jurisdiction to take cognizance on basis of Chargesheet as the same is barred by Sec.195 of the Code.

2... As far as the offence u/s.51 of the Disaster Management Act, 2005 is concerned, Sec.60 of the said Act provides that no Court shall take cognizance of the offences under this Act except on a complaint made by a particular authority. Here also, Section 2(d) of the Code comes into play and without the complaint in writing by the Authority mentioned in Sec.60, no Court can take cognizance of the offence.

3... Moreover, on going through the Chargesheet and the papers annexed therewith, all the offences seem to have been committed in the course of one transaction. This Court is very well aware of the ratios laid down by Hon'ble Supreme Court in the case of Pankaj Aggarwal vs. State of Delhi reported in 2001(3) Crimes (SC) 361; ratios laid down by Hon'ble Gujarat High Court in the cases of Kandhal Sarman Jadeja v.

State of Gujarat - 2019(2) GLR 1462 and Nayan Harishbhai Kankhara v. State of Gujarat - Cr.M.A. No. 23009-2015, but as all the alleged offences are interconnected and can't be split from one another, this Court is not in a position to take cognizance as barred by Section 195 of the Code.

4... Recently, on 21st September 2020, Hon'ble Bombay High Court (Nagpur Bench) has quashed the FIR and the Chargesheet filed for the offence u/s.269, 270 of the IPC, Sec.51 of the Disaster Management Act, Sec.3 of the Epidemic Diseases Act, 1987 & Sec.14 of the Foreign Act, being barred by Sec.195 of the Code, in the case of HLA SHWE vs. State of Maharashtra in Criminal Application (APL) No.453-2020.

5... Thus, in view of my above discussion, the entire proceeding being barred by Sec.195 of the Code, is not tenable. In light of the above decisions and as per the ratio laid down in the Case of K. Prabhakar Rao vs. State of A.P., decided on 25/11/2014 by the Hon'ble Apex Court, the proceedings of the present Criminal Case has to be stopped u/s.258 of the Code. Hence, in conclusion, I pass the following order:

:: O R D E R ::

The proceedings of the present Criminal Case is hereby ordered to be stopped u/s.258 of the Criminal Procedure Code, as barred by Sec.195 of the Code, and thereby, the accused is hereby discharged from the case.

However, the appropriate authority is at liberty to initiate appropriate proceedings afresh according to the law.

This Order is pronounced in the Special Sitting of Magistrates on this the 12 th day of MARCH 2022.

Ahmedabad
Date:- 12-03-2022

(H.J.Tanna)
Additional Chief Metropolitan Magistrate,
Court No.7, Ahmedabad.
UIC No.GJ00955.