

order below Ex.01

In the Court of 6th Addi. Sr.Civil Judge & Addi.Chief Judicial Magistrate, Rajkot **:: Order Below Exh.1 (Charge Sheet) filed by Police ::**

- (1) In this case, investigating police officer filed charge sheet against accused under section 188 IPC on the basis of FIR lodged against the accused under the same section. On perusing the record police filed charge sheet on the ground that accused violated the terms of promulgation issued by Commissioner so he committed the crime under section-188 of IPC. In section 195 Cr.P.C., It is clearly written 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.
- (2) In **Daulat Ram v/s. 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.**, 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 can not be maintained.
- (3) In **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 proceeding are to be dropped or complaint has to be dismissed but definitely no order of acquittal or discharge can be passed.
- (4) 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.

- (5) 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.
- (6) In **Arvind Kejriwal & Ors. v/s. Amit Sibal & Anr., Cri.Misc.Application no.18920-21/2013**. it was held by 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.
- (7) As per the above discussion if as per law if 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 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.

ORDER

It is hereby ordered to drop the proceedings against the accused without going on the merits of this case, hence disposed of accordingly.

This order will not be precluded the prosecution to initiate proceedings afresh against the accused by the following procedure prescribed under law.

If any muddamal recovered shall be disposed or be handed over as per rules and regulation.

Signed and pronounced on today in Special sitting organised by GSLSA.

Rajkot
Date:-10/07/2021
(L.A.-Sp.sitting)

(Sanat Jayantilal Panchal)
6th Add. Sr. Civil Judge & A.C.J.M.,
Rajkot, Code No.GJ00864.