

Order below Exh.1 in Criminal Case No.15056/2021

1. Investigating Officer [In short 'I.O'] has filed the Chargesheet against the accused **u/S.188 of the Indian Penal Code, 1860** [in short 'I.P. Code'] 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.
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 ?

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 same 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 Gujrat, 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. The similar views have been taken in cases vide *Govind Mehta v. The State of Bihar*, AIR 1971 SC 1708; *Patel Laljibhai Somabhai v. The State of Gujarat*, AIR 1971 SC 1935; *Surjit Singh & Ors. v. Balbir Singh*, (1996) 3 SCC 533; *State of Punjab v. Raj Singh & Anr.*, (1998) 2 SCC 391; 2 *K. Vengadachalam v. K.C. Palanisamy & Ors.*, (2005) 7 SCC 352; and *Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.*, AIR 2005 SC 2119 ;*C. Muniappan & Ors. vs. State of Tamil Nadu*, (2010) 9 SCC 567).
10. 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.
11. Upon the discussion of following provisions of law & judgments propounded by the Apex Court & various Hon'ble High Courts, this Court passes the following final order.

ORDER

The proceeding against the accused person/persons is hereby dropped without the effect as to acquit or discharge the accused person/persons with a liberty to the prosecution to file complaint before Court as per the provisions of law.

Pronounced in the Open Court today on the 10th day of July, 2021.

Date :10.07.2021

Place: Ahmedabad

(Ashadullakhan Rahimkhan Ghori)

UIC No.GJ00998

5th Addl. Chief Judicial Magistrate,
Ahmedabad (Rural), at Mirzapur.
(Special Sitting-Lok Adalat)