

Order below Exh. 01.

Police has filed a charge-sheet u/s. 173 of Criminal Procedure Code ('the Code' in short) for the offence alleged to have been committed by the accused u/s. 188 of IPC alongwith other offences. As per Section 195 of the Code, only complaint defined u/s. 2(d) of the Code is to be filed and as per the definition of the complaint, police report is specifically excluded. Undisputedly, police has filed a charge-sheet and not a complaint defined u/s. 2(d) of the Code and therefore, cognizance on basis of charge-sheet is barred. I have taken into consideration the ratios laid down by Hon'ble Apex Court and Hon'ble Gujarat High Court in the cases of (1) Kanjibhai Babaldas Patel v. State of Gujarat - Criminal Misc. Application No. 348 of 1995; Govardhankumar Thakoredas Asrani v. State of Gujarat - 2018(1) GLH 63; C. Muniappan v. State of Tamil Nadu - (2010)9 SCC 567; M. S. Ahlawat v. State of Haryana - AIR 2000 SC 168; Daulat Ram v. State of Punjab - AIR 1962 SC 1206; Babita Lila v. Union of India - AIR 2016 SC 4061; Bechar Vala v. State of Gujarat - 2002 eGLR_HC 10005365; Arundhati Bhattacharya v. State of Gujarat - Cr.M.A. 12818-2014; Merubhai Mandanbhai Chandra v. State of Gujarat - Cr.M.A. 17286-2017 and including the recent Judgment in case of Shahidkhan Vahidkhan Pathan v. State of Gujarat - Cr.M.A. No. 17473 of 2020 (DOJ 14-06-2021). Almost in all the said 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 and non-compliance of it would vitiate the prosecution and all the consequential orders. Only the complaint as defined u/s. 2(d) would be mandatory and not the charge-sheet. If the offences falling under the purview of Section 195 of the Code and other penal provisions are not able to be separated or segregated, such other penal provisions are also barred to be taken cognizance of on basis of charge-sheet. Therefore, this Court has no jurisdiction to take cognizance on basis of charge-sheet as barred u/s. 195 of the Code.

So far as Section 51 of the Disaster Management Act, 2005 is concerned, Section 60 of the said Act is required to be taken into consideration which 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 a complaint in writing by the Authority mentioned in S. 60, no Court can take cognizance of offence. Undisputedly, there is no complaint defined u/s. 2(d) of the Code and hence, cognizance is barred.

So far as Section 3 of the Epidemic Diseases Act, 1897 is concerned, it is a penal provision providing that Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188

of the Indian Penal Code, 1860. Thus, once again, Section 188 of IPC and Section 195 of the Code would come into play and therefore, cognizance of offence is barred on basis of charge-sheet.

Recently on 21st September, 2020, Hon'ble Bombay High Court (Nagpur Bench) has quashed FIR and charge-sheet filed u/Ss. 269, 270 of I.P.C, Section 51 of Disaster Management Act, Section 3 of the Epidemic Diseases Act, 1987 & Section 14 of the Foreign Act being barred by Section 195 of the Code in the case of HLA SHWE v. State of Maharashtra in Criminal Application (APL) No.453-2020.

Thus, as per the above discussion, the whole proceedings are barred by Section 195 of the Code and are not tenable. In light of the aforementioned 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 proceedings of the present Criminal Case should be stopped u/s Section 258 of the Code as this Court is lacking Jurisdiction. Hence, following order.

- :: Final Order :: -

Proceedings of the present case are hereby ordered to be stopped u/s. 258 of the Criminal Procedure Code as barred by Section 195 of the Code and thereby, the accused of the present case is discharged.

Appropriate authority is at liberty to initiate appropriate proceedings afresh as per the provisions of law.

Bail & bond be treated as bonds u/s. 437-A of the Code for the next 6 months and thereafter, it shall stand cancelled.

This Order is pronounced in the Special Sitting of Magistrates on this the 11th day of Nov, 2021.

Ahmedabad

Date:- 11-12-2021

(Smt.R.R.Desai),

Additional Chief Metropolitan Magistrate,
Court No.09, Ahmedabad.

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