

ORDER BELOW EX.1

1. Read the chargesheet & police papers.
2. In this case the investigation officer has filed the chargesheet under section 188, 269 of IPC alongwith section 135 of G.P.Act on the basis of FIR. Whether the Court can take the cognizance of offences under sections 172 to 188 of IPC without complying with the provisions of section 195 of the criminal procedure is answered by the Hon'ble Calcutta High Court in the case of **Mt. Lachmi Devi V. Emperor AIR 1931 Cal. 122** wherein it was held that Section 195 of the Criminal Procedure Code prescribes 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. It would not be possible to prosecute a person on the basis of 'police report' even when the offence has been made cognizable without complying with the provisions enumerated in section 195(1)(a).
3. In **Daulat Ram vs 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 cannot be maintained.
4. Hon'ble Gujarat high Court in **KanjiBhai Vs State** in Cr.M.A No. 348 of 1995 held that as per section 195 Cr.P.C. Complaint by the concerned public servant is the Sine Qua Non for initiating the proceedings of offence under sections 172 to 188 of IPC against the accused and if there is no complaint of concerned public servant, cognizance taken by court is bad in law. Only commissioner whose proclamation order is violated or the officer to whom he is administratively subordinate can file the written complaint and in absence of this procedure, the Courts have no power to take cognizance on chargesheet.
5. In the case of **Govardhankumar Thakoredas Asrani V. State of Gujarat, Sp.Cri.Appli.No.2544/2015,D.13.04.2017**, Hon'ble High Court has held as under:

39. It is true that section 195 of the Code does not bar the trial of an accused for a distinct offence disclosed by the same set of facts and is not so stated therein. Section 195 also does not provide further that if in the course of the commission of that offence, the other distinct offences are committed, the Court concerned is debarred from taking cognizance in respect of those offences as well. However, if the perusal of the first information report and other papers of the chargesheet makes it clear that the offence under section 186 or section 188 of the IPC, as the case

may be, is closely interconnected with the other distinct offences and cannot be split up, then in such circumstances, the bar of section 195 of the Cr.P.C will apply to such other offences also.

6. In this case on hand I.O has submitted the charge-sheet under Section- 188, 269 alongwith Section-135 of G.P.Act on the basis of FIR under the same section. As per facts of this case and allegations alleged against the accused, the accused had breached the conditions of proclamation order regarding COVID-19 pandemic issued by the Commissioner/Collector. On perusal of FIR and chargesheet submitted, it is clear that the offence under section 188 of the IPC is closely interconnected with Section 269 of IPC and section 135 of G.P.Act. Hence, it cannot be split up.
7. Hon'ble Supreme Court of India in case of **Bhagwat Singh V. Commissioner of Police and Ant.** reported in **1985 AIR 1285** has held that if chargesheet is submitted in Court and Magistrate is not agreed with the report then he has to drop the proceedings against the accused. In this case, if this Court has to take cognizance of the offences punishable from section 172 to 188 of IPC with other distinct offences which all are closely interconnected and proceed with the matter to convict or acquit the accused inspite of lack of jurisdiction then it is bad in law. In the similar way if the accused is acquitted or discharged on the basis 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.
8. Upon the discussion of provisions of law and looking to the ratio laid down in judgements pronounced by the Apex Court and various Hon'ble High Courts, this Court passes the following final order in the interest of justice -

FINAL ORDER

The Proceeding against the accused person u/s 188,269 of IPC and u/s 135 of G.P.Act is hereby dropped with liberty to prosecution to take such steps as it deems fit in accordance with law. If any muddamal recovered shall be disposed as per rules after Appeal period.

Rajkot.

Date: 11/09/2021

(MANISH V. CHAUHAN)
10th ACJM, Rajkot
GJ01015