

Order Below Exhibit : 1

1. The investigating agency filed the charge-sheet on the ground that the accused Obstructing public servant in discharge of public functions and committed the crime under Section 332,186,188,114,269 of Indian Penal Code, 1860 .THE EPIDEMIC DISEASES ACT, 1897 sections-03
2. This Court has Perused the section 190 & 195 of Code of Criminal Procedure,1973 (herein after referred as “Cr.P.C”) in which it is stated that the Magistrate can take the cognizance subject to the provision of this Chapter i.e. Chapter XIV hence, in Section 195 of CrPC, it is clearly provided 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 written of the public servant concerned or of some other public servant to whom he is administratively subordinate. The complaint referred to above in Section 195(1)(a) means complaint as defined under section 2(d) of the Cr.P.C. It means a complaint in writing before this court.
3. In such circumstances referred to above, the court could not have taken cognizance of the offence under Section 186 of the Indian Penal Code on a police report.
4. Moreover, Section-332,186,188,114,269 of Indian Penal Code, 1860 .THE EPIDEMIC DISEASES ACT, 1897 sections-03. are distinct offence and not covered under section 195 of the Cr.P.C, yet, if all the offence are alleged to have been committed in the course of one transaction and such offences formed an integral part, then bar of Section 195 would be attracted even so far as the two offences are concerned. The law in this regard is well settled. In the case of ***State of U.P Vs. Suresh Chandra Srivastava and others, reported in AIR 1984 SC 1108***, the Supreme Court has held as under:-

“It is well settled that where an accused commits some offence which are separate and distinct from those contained in Section 195, Section 195 will affect, only the offence mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 Cr.P.C”

This court may also quote the decision of the Hon’ble High Court of Gujarat In the case of ***Goverdhan Kumar Thakoredas Asrani Vs. State of Gujarat; reported***

in 2018(1) GLH 63, The Gujarat High Court has observed in the Para.41 of the said Judgment that;

“If in truth and substance, an offence falls in the category of sections in section 195, it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences.”

5. The same principle would apply in the present case. It is not permissible for this Court to split up the said offences, i.e Section-332,186,188,114,269 of Indian Penal Code, 1860 .THE EPIDEMIC DISEASES ACT, 1897 sections-03 because all the said offences could be said to have been committed in the course of one transaction, Therefore, the present criminal Case won't survive for want of the complaint in written of the public servant concerned or of some other public servant to whom he is administratively subordinate. hence, following order passed;-

-: ORDER :-

1. Present Criminal Case is disposed of as dismissed.
2. The Muddamal, if any, seized by the authorities in this case, is hereby ordered to be disposed of as per the provisions of Criminal Manual.
3. The accused of this matter is hereby discharged from alleged offences u/s 258 of Cr.P.C.

Pronounced & Signed in open Court on 09th december 2023.

Dated. 09/12/2023

Surat.

(NEHARIKA RAGHAV)

2nd Add.Civil Judge & JMFC, Surat.