

Order below Ex:- 1 in criminal case No:-1766/2021

Perused the record. Investigating Officer has filed the charge sheet against the accused under section-188 of the Indian Penal Code, 1860 on the basis of First Information Report. On perusing the record, it transpires that the charge sheet has been filed on the ground that the accused violated the terms of promulgation issued by the District Magistrate, Dahod under section 144 of the Cr.P.C, section 43 of the Gujarat Police Act and breached the guidelines of the Central Govt. & committed the crime.

This court has also given opportunity to the Ld. APP for the state. Ld. APP argued that there is sufficient evidence against the accused so, cognizance should be taken against the accused. When charge sheet is filed against the accused under section-188 of the Indian Penal Code, section 195(1) (a) of I.P.C. must be taken in to consideration which is as under :--

Section 195:- Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under section 172 to 188 (both inclusive) of the Indian Penal Code, or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

Section 2(d) of Cr.P.C defines a complaint. Complaint means any

allegation made orally or in writing to a Magistrate, with a view to taking action under this code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Refer to the above legal provisions, section 195 of the Code of Criminal Procedure, 1973 provides that no court shall take cognizance of offence punishable under section 177 to 188 (inclusive of both sections) of the Indian Penal Code except on the complaint in writing of the Public Servant concerned or of some other public Servant to whom He/She is administrative subordinate. Therefore in the present case court cannot take cognizance of this offence by treating the police report as complaint under section 190(1) (a) of Cr.P.C because the mandatory requirement of section 195 (1)(a) are missing.

Further, In number of decisions Hon'ble supreme court and High Courts has held that without complying the terms of Section 195 of Cr.P.C., no court can take cognizance of offence committed under section 188 of IPC.

In M. S. Ahlawat v/s State of Haryana, AIR 2000 SC 168, it is held that "Provisions of Section 195 Cr.P.C 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."

In C.Muniappan and Others v/s State of Tamilnadu reported in (2010) 9 SCC 567 The Hon'ble Apex Court in para 20 categorically held that Section 195(a) (i) of Cr.P.C. bars the court from taking cognizance of any offence punishable under the section 188 IPC or abetment to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a

particular procedure in a case of contempt of lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. Legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. Therefore, this court can not take cognizance of the offence committed under Section 188 IPC read with Section 3 of Epidemic Act on the charge-sheet submitted under Section 173 Cr.P.C.

In Kanjibhai v/s. State of Gujarat, 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 Charge-sheet 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."

In case of Narendrasigh Arjunsigh Atodariya v/s state of Gujarat Special criminal application (quashing) No. 6244/2015. Hon'ble High Court of Gujarat held that "The prosecution would not get saved even by virtue of the explanation to Section 2(d) of the Code because the offence under Section 188 is a cognizable offence. In para 6 Hon'ble High Court clearly

stated that "The trial court could not have taken cognizance of the offence punishable under section 188 on a Police Report i.e. the charge sheet."

Thus, in light of the aforesaid reasoning this court is of view that the cognizance of the above stated offence cannot be taken on the charge sheet. Hence this case is disposed of accordingly.

The muddamal if any seized by the authorities is hereby ordered to disposed off as per the provisions of criminal manual.

signed and pronounce in open court on 10th July 2021.

Place: Dahod

Date: 10/7/2021

(Ms. Jyotsna .V. Parmar)

Chief Judicial Magistrate,

Dahod