

ORDER BELOW EXH.1.

1) Heard the prosecution and gone through the proceeding. The accused is charged with offence punishable under section 188, 269 of Indian Penal Code R/w. Sections 3 of Pandemic Act, 1897, R/w. Section 51 (b) of National Disaster Management Act, 2005 R/w. Section 11 of Covid- 19 Act, 2020. The case is filed by the prosecution after registering the First Information Report against the accused. Further, it appears that, after making investigation by Investigating officer, the report under section 173 of the Code of Criminal Procedure (hereinafter referred as 'the Code') has been filed before this Court.

2) I have gone through the provision of section 195(1) of the Code. It is specifically provided that no court shall take cognizance- (a) (i) of any offence punishable under section 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1960). Therefore, as per this provision this Court cannot take cognizance of this case except the complaint filed by the competent person as provided in section 2(d) of the Code. For taking cognizance of the offence punishable under sections 172 to 188 of the Indian Penal Code, the concern person has to follow the procedure of Section 200 of the Code. But, in this case the case registered at police station and police has taken the cognizance and forwarded the chargesheet to this Court. It is alleged that the accused has breached the rules of Lock Down in the Pandemic of Covid-19 and thereby breached the order of the Commissioner of Police, Brihan Mumbai. All the series of the acts of the accused are of the same transaction.

3) The breaking of Lock Down rules and doing negligent act likely to spread infection of disease dangerous to life are committed in a single transaction. It is an integral part of the offence constituting and made punishable under section 188 of the Indian Penal Code. **In the case of Ramil Bhika Koli Vs State of Gujarat (1999 Cr. L. J. 1244)**, wherein, His Lordship of the Hon'ble Gujarat High Court has observed that, *if the offence is taken place in a single transaction and integral part of offence constituting and made punishable under section 186 of the Indian Penal Code, they*

cannot be split out. The Hon'ble His Lordship has further observed that, "the offences punishable under section 143, 147, 148, 149, 332, 333 and 307 of the Indian Penal Code cannot be split from the complaint for a separate offence in the facts and circumstances of the present case and thereby cognizance in respect of said offences are also barred under section 195(1) (a) (i) of the Code as held by the Hon'ble Supreme Court in the case of State of Uttar Pradesh V/s. Sureshchandra Shrivastav (AIR 1984 SC 1108)".

4) The offences p/u/s 188, 269 of IPC r/w 3 of Pandemic Act, 1897, R/w. Section 51 (b) of National Disaster Management Act, 2005 R/w. Section 11 of Covid- 19 Act, 2020 are committed in a single transaction and they are integral parts of each other. Therefore, they cannot be split out. Therefore, in my view, no case is made out against the accused and this court has no power to take cognizance without the complaint of the competent public servant. The proceeding is barred under section 195(1) (a) (I) of the Code which has been also upheld in the case of **Jagdish and ors V/s. The State of Haryana in Criminal Miscellaneous No.M-10295 of 2015** that as per section 195(1) of the Cr. P. C no FIR can be registered by the police unless there is written complaint made by the public servant concerned and if made then the police report will be quashed for the offence under section 188 of IPC.

5) Moreover, no evidence is filed on record to show that the accused was suffering from Covid-19 and no evidence is produced on record to show that accused was having knowledge about the order of which he has committed disobedience. Therefore, it cannot be said that he was spreading contingent disease. In these circumstances also, no case is made out against the accused. Hence, I pass the order:

ORDER

- 1) The proceeding is stopped under section 258 of Cr. P. C.
- 2) The bail bond of accused is cancelled and cash security if any be returned to accused after appeal period is over.

sd/-

Dt. 08.06.2023

(R. M. Shaikh)
Metropolitan Magistrate,
10th Court, Andheri, Mumbai

