

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE
SRINAGAR**

CNR NO: JKSG-0305-3174-2022

File NO: 2595354/2022

Date of Inst: 15.09.2022

Date of Order: 07.04.2025

In the case of:-

UT of J&K through SHO P/S Nigeen

MHC for the Prosecution

V E R S U S...

Abid Hussain Rather

S/o Bashir Ahmad Rather

R/o Summerbugh, Budgam Tehsil Chadoora

...Accused

NEMO

In Reference:

FIR NO: 115/2022 of P/S Nigeen

Offence under Section 188 IPC

O R D E R

CORUM: AADIL MUSHTAQ AHMAD (JK00163)

1. This file has come up for hearing today. MHC for the prosecution present. Nemo for accused.
2. As per the report, offence under section 188 of IPC is alleged against the accused, however, perusal of the material on record would reveal that the matter in hand would be hit by application of section 195 of Cr.PC
3. Before proceeding ahead it will be apt to reproduce sections 188 of IPC and 195/CR.PC.

Section 188 of IPC reads as:

Disobedience of order duly promulgated by public servant: - Who ever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from certain act, or to take certain order with certain property in his possession or under his management, disobeys such directions:

Shall if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance of injury to any

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person lawfully employed, be punishable with imprisonment which may extend to one year and shall also be liable to fine. and if such disobedience causes or tends to cause danger to human life, health or safety or causes or tend to cause a riot or affray, shall be punished with imprisonment which shall not be less than three months but may extend to two years and shall also be liable to fine.

Section 195 of IPC reads as:

- 1) No court shall take cognizance –
 - a) Prosecution for contempt of lawful authority of public servants. – of any offence punishable under sections 172 to 188 of the Ranbir penal Code, except on a complaint in writing of public servant or some other public servant to whom he is subordinate.

4. From the perusal of the aforesaid provision, it is clear that the cognizance of offences for the offences under section 172 to 188 of IPC is barred except on a complaint in writing of a public servant concerned or some other public servant to whom he is subordinate. Sections 195-199 are exceptions to the general rule that any person having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. The general rule is that any person having knowledge of the commission of an offence may set the law in motion by a complaint even though he is not personally interested in, or affected by the offence. To this general rule, Sections 195 to 199 of Cr.P.C. provide exceptions, for they forbid cognizance being taken of the offences referred to therein except where there is a complaint by the Court or the public servant concerned. The provisions of these sections are mandatory and Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required by the section concerned. There is absolute bar against the Court taking cognizance of the case under Section 188 of IPC except in the manner provided in Section 195 of Cr.P.C, where the complaint is not in conformity

with the provisions of this section, the Court has no power even to examine the complainant on oath because such examination could be made only where the Court has taken cognizance of the case. The absence of complaint as required by the section is fatal to the prosecution and it is an illegality which vitiates the trial. The provision of Section 195(1) (a) being mandatory, and only the concerned public servants can make a complaint and initiate proceedings in respect of these offences. The power to make the complaint can be exercised only by the public servant who is for the time being holding the office or is a successor-in-office of the public servant whose order is disobeyed or lawful authority disregarded. It is the beaten law that the court in terms of section 195 (1) of Cr.PC is barred to take cognizance of an offence punishable under section 188 of IPC except on the complaint of the public servant concerned or some other public servant to whom he is administratively subordinate.

5. My view is forfeited by the judgment State Of U.P. Vs. Mata Bhikh [1994] 1 Crimes (SC) 945 [1994] 0 AIR (SCW) 1935 wherein it has been held:

“The object of this Section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or ill will or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this Section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing of the public servant concerned as required by the Section without which the trial under Section 188 of the Indian Penal Code becomes void abinitio. See Daulat Ram v. State of Punjab 1. To say in other words a written complaint by a public servant concerned is sine qua non to initiate a criminal proceeding under Section 188 of the I.P.C. against those who, with the knowledge that an order has been promulgated by a public servant directing either to abstain from a certain act, or to take certain

order, with certain property in his possession or under his management disobey that order. Nonetheless, when the Court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the Section itself which is to the effect that no Court can take cognizance of any offence punishable under Sections 172 to 188 of the I.P.C. except on the written complaint of the public servant concerned or of some other public servant to whom he (the public servant who promulgated that order) is administratively subordinate”

6. In view of the above, it is clear that for invoking section 188 of IPC, the prosecution can be initiated only on the complaint of the public servant whose order has been disobeyed. The provisions under section 195 of Cr.P.C in unequivocal terms bar jurisdiction of the court from taking cognizance for offences under section 188 of IPC except on the compliant in writing of the public servant whose order has been disobeyed. No such complaint is on file and bar of section 195 of Cr.PC is applicable.

7. Keeping in view the aforesaid discussion this court is left with no option but to stop the proceedings. Accused in effect shall stand discharged and final report is dismissed. Bail bonds are discharged. Seized property, if any be released in favour of rightful owner after the period of appeal is over. File after due completion be consigned to records.

Announced
07.04.2025

(Aadil Mushtaq Ahmad)
Chief Judicial Magistrate
Srinagar

