

ORDER BELOW EXHIBIT 01 IN SCC No. 2655/2020

1. In present case, the police constable has complained that the accused disobeyed the order promulgated by the District Magistrate, Pune, SDO, Khed and Commissioner of Pimpri Chinchwad issued u/s 144 of the Code of Criminal Procedure (for short Cr.P.C) in order to control the spread of Corona-19 virus. Therefore, the accused has committed an offence punishable under Section 188 of the Indian Penal Code (for short 'the IPC'). Record shows that the complainant has not filed the copy of the Order promulgated or notification issued by the public servant. There is nothing on record whose order, the accused has breached. These orders were promulgated by these authorities.
2. Section 188 IPC covers an offence related to "contempt of lawful authority of public servants". The provision specifically deals with the offence of disobedience to an order duly passed by a public servant. To substantiate the prosecution under this provision the prosecution must prove that there was a lawful authority to promulgated such order, which is alleged to have been disobeyed. Furthermore, to take cognizance of such offences, requirement of Section 195(1)(a) of the Cr.P.C. has to be complied with. It provides that Court shall not take cognizance of any offence punishable under Section 172 to 188 of the IPC, except on a written complaint of the concerned public servant or of his superior. Along with barring private complaints, it also expressly bars a court from taking cognizance of this offence under Section 190 of the Cr.P.C., on the basis of final report by the police. Even in the case of **C. Muniappan v. State of T.N., {(2010) 9 SCC 567}** the Hon'ble Supreme Court of India held that in a case where charge is under Section 188 of the IPC, cognizance by the court Under Section 195(1)(a) of the Cr.P.C., can only be taken on the basis of a complaint in writing by the public servant whose lawful order had been contravened, or on the complaint of his superior, and if not, the whole proceedings will stand vitiated and will be liable to be set-aside. Hence, the provision of Section 195(1)(a) of the Cr.P.C. being mandatory, any non-compliance thereof vitiates the entire prosecution. Similar, view has been taken by the Hon'ble Supreme Court in case of **Daulat Ram v. State of Punjab (AIR 1962 SC 1206)**.
3. Furthermore, in case of **State of U.P. v. Mata Bhikh, (1994) 4 SCC 95** the Hon'ble Supreme Court has laid down as under :-

7. A cursory reading of Section 195(1)(a) makes out that in case a public servant concerned who has promulgated an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate i.e. some other public servant who is his official superior and under whose administrative control he works.

4. Record is silent to show that whose order is alleged to have been contravened by the accused and who has promulgated the order or issued notification. Assuming for the time and by taking judicial notice of the pandemic situation, various order/s of promulgation/notification is issued by the District Magistrate/SDO/Tahasildar/Commissioner of Police/Superintendent of Police regarding the implementation of complete lock-down due to spread of Covid-19 pandemic in the Pimpri Chinchwad, Pune area but the complaint is not filed by the concerned public servant i.e. Distt. Magistrate / SDO / Tahasildar or by his superior officer as required by Section 195(1)(a) of the IPC so as to get the jurisdiction to take cognizance under Section 190 of the Cr.P.C. Hence, the complaint filed by the police constable suffers from inherent lack of jurisdiction or competence to file it before this Court as provided Under Section 195(1)(a) of the Cr.P.C.
5. In view of the law laid down by the Hon'ble Apex Court in the case of C. Muniappan and Others Vs State of Tamilnadu, issuance of process on the basis of complaint which is not filed by the competent authority will certainly vitiate the proceedings and trial of the accused for the alleged commission of an offence punishable under Section 188 of the IPC would be an abuse of process of law and such procedure is uncalled for. Hence, in view of above discussion, the complaint is liable to be dropped. Hence, following order is passed :-

ORDER

1. The Complaint is dismissed as not tenable under section 195(1)(a) of the Code of Criminal Procedure, 1973.

Khed, Pune
Dated : 12.08.2022

(P. A. Jagdale)
Judicial Magistrate First Class,
Khed-Rajgurunagar, Pune

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file Order is same word for the word as per original Order.

Name of Steno	:-	Shri. Mahesh R. Gunnal Stenographer Grade - III
Court Name	:-	Shri. P. A. Jagdale Judicial Magistrate F.C., Khed -Rajgurunagar, Pune
Date of Order	:-	12.08.2022
Signed by PO	:-	12.08.2022
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