

Criminal Case No. 5166 of 2021

Order below Exh.1

- (1) Perused the record. This case came to be registered on the basis of chargesheet filed by the I.O. after completion of investigation in the offence registered with Patan B Division Police Station for an offence u/s 188, 269 of I.P.C., and u/s 51(b) of the Disaster Management Act, On the basis of 'First Information Report' lodged against the accused under the same section. On perusing the record, it transpires that Investigation Agency filed the charge-sheet has been filed on the ground that the accused violated the terms of promulgation issued by the District Magistrate, Patan. It transpires from the perusal of the record that the I.O. has not filed a private complaint in this case within the meaning of Section 2(d) of the Cr.P.C., but instead has filed a police report under section 173 of the Cr.P.C. (i.e. charge-sheet).

In Section 195 of the Code of Criminal Procedure, 1973, 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 writing of the Public Servant concerned or of same other Public Servant to whom he is administratively subordinate. Similarly Section-60 of the Disaster Management Act is also bar on cognizance of any offence under that act, except on a complaint.

- (2) In **Daulat Ram v/s. State of Punjab, 1962 AIR 1206**, Hon'ble Supreme Court described the scope of Section 195 of the Code of Criminal Procedure, 1973 and held that as per Section 195 of the Code of Criminal Procedure, 1973, the Complaint must be in writing by the Public Servant concerned and if, there is no compliance of this provision then the trial would be without jurisdiction and the conviction cannot be maintained.

- (3) In **Gaurishankar Jha v/s. Chintanath Jha**, Hon'ble Patna High Court held that if, it appears that when the cognizance has been taken and the defect of want of jurisdiction or absence of sanction crops up, then the Court should not proceed with the trial. If, Witness have been produced by both sides when a Court has no jurisdiction or there is inherent want of sanction, the prosecution becomes bad, illegal and without jurisdiction. All proceedings are to be dropped or complaint has to be dismissed but definitely no order of acquittal or discharge can be passed.
- (4) In **Kanjibhai v/s. State on 16th March, 2010, Criminal Misc. Application No.348 of 1995**, 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 Chargesheet 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.
- (5) Considering above judgments and ratios, it transpires that this court has no jurisdiction and it is not permissible for a Court to take cognizance of an offence u/s 188 of I.P.C. in light of the bar imposed by Section 195 of Cr.P.C. Section 195 of Cr.P.C. is a mandatory provision and therefore, the court can take cognizance only upon the private complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Moreover, Section 195 being imperative in nature, cognizance of any offence referred to therein without a proper complaint by the concerned public servant is an illegality not curable by Section 465 (Janki Prasad Vs. Emperor, (1926) 27 Cri LJ 901: AIR 1926 ALL

700). Thus, it is clear from the above discussion that cognizance of an offence u/s 188 of I.P.C. is barred, unless it is on the basis of a complaint filed by the public servant concerned.

- (6) Further, Accused is charged with another section of IPC i.e. under section 269 of Indian Penal Code. The section is read as under.

"269. Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

- (7) However, Generally when a single act of the accused is of such a character as to amount to two distinct offences, one which is covered by Section 195(1)(a) and the other which is not, it is open to the person aggrieved thereby to lodge a private complaint of the latter offence, and cognizance of that offence u/s 190 is not barred by the operation of Section 195(1)(a). To hold otherwise would amount to legislating and adding very materially to the language of that Section which, it is submitted, would not be permissible while interpreting the provision.

It may however, be noted that where offences are so intermingled with each other that it is impossible to separate them for trial in respect of any particular offence which does not attract the provisions of Section 195(1), it is not open to a Court to proceed with the trial of some offences only by dropping charges for other offences attracting that Section [Basappa Basavantappa Sureban And ors. Vs. Ningangowda Dyavanagouda Patil, 1978 Cri LJ 460 (469) (kant); see also, Chandra Kishore Jha Vs. State of Bihar, 1975 Cri LJ 1939 (Pat)].

- (8) In the case of **State of Karnataka v. Hemareddy**, 1981 AIR 1417, 1981 SCR (2) 695 The Hon'ble Supreme Court has also again held that in cases where in the course of the same

transaction an offence for which no complaint by a court is necessary under Section 195(1)(b) of the Cr.P.C. and an offence for which a complaint of a court is necessary under that sub-section are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in S. 195(1)(b), Cr.P.C. should be upheld.

- (9) Hence, prima facie it seems that Section-269 is added for avoiding the bar under section 195 of CrPC and also to avoid filing of a private complaint. Be whatsoever it may be, in light of the observations made in the case laws cited above, Eventhough Section 269 of the I.P.C. is applicable in the case, As it would neither be justify two split up the sections and only to proceed the trial only for offence under section 269, nor it is possible to separate them for trial as both the sections are intermingled with each other. It is not justiciable for this Court to proceed with the trial of this offence (i.e. u/s 269 of I.P.C) only by dropping charges for other offence (i.e. Section 188 of the I.P.C) attracting Section 195 of the Cr.P.C.
- (10) The chargesheet is also filed making accused liable for the offence under section 51(b) of the Disaster Management Act 2005. The power has been given to the collector under section-34 of the said act to promulgate the notification for certain restrictions. Section-51 of the said act is provided for declaring the act of obstruction or refusal to follow the order of the authority as an offence and prescribed the punishment, and section-60 is regard to provision for the taking cognizance. Section-51(b) and Section-60 of the act are as per under :-

51. Punishment for obstruction, etc.-

(1) Whoever, without reasonable cause-

(a) * * * * *

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be

punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

60. Cognizance of offences.-

No court shall take cognizance of an offence under this Act except on a complaint made by-

- (a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or
- (b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid."

Considering section-60, No Court can take the cognizance for the offence committed under Disaster Management Act, except on a complaint. Hence cognizance on a Police Report (Charge-sheet) is impliedly forbidden by the law. Hence This Court could not take the cognizance of the offence under Disaster Management act, i.e. under section-51(b) of the act. Hence Likewise Bar of the section-195 of CrPC, section-60 of Disaster Management act creates the bar to take the cognizance of the offence under the Disaster Management act. Applying the ratios of above referred Judgments in relation to section-195 of CrPC, the ratio regarding Bar of Cognizance also required to be applied for the offence charged under Disaster Management Act.

- (11) In the end, This Court is of the view that the Investigation Officer should have filed a private complaint instead of police report u/s 173 of Cr.P.C. in light of the mandatory bar u/s 195 of

Cr.P.C., and section-60 of the Disaster Management Act, 2005. Therefore, in light of the aforesaid decisions and as per the ratio laid down in the Case of **K. Prabhakar Rao Vs. State of A.P., decided on 25/11/2014 by the Hon'ble Andhra Pradesh Court in CRIMINAL REVISION CASE No.1212 of 2013**, the proceeding of the present Criminal Case should be stopped as this Court is lacking the jurisdiction. Hence, the final order as per under.

-:: ORDER ::-

- (1) The present Criminal Case is hereby disposed of by way of stop proceeding under section 258 of Code of Criminal Procedure. Accused ordered to be discharged.

Pronounced in open Court today on this 10th day of July, 2021.

Date : 10/07/2021

Patan.

(Tejas Jitendrabhai Patel)

Chief Judicial Magistrate, Patan.

Judge Code No. *UI GJ 00959*