

In The Court of Addl. Chief Metropolitan Magistrate, Court No.09, Ahmedabad.

Criminal Case No.72283.20

Order Below Exh. No.1

1. Investigating Officer [In short 'I.O'] has filed the Chargesheet against the accused **u/S.188 of the Indian Penal Code, 1860** [in short 'I.P. Code'] and **Sec.135 of the Representation of the people Act-1951** on the basis of First Information Report. I.O. has filed the Chargesheet on the ground that accused violated the term of promulgation issued by the District Magistrate and breached the guidelines of the Central Govt. & committed the above crime.

2. This Court has also given ample opportunity to the Ld.APP for the State and the Ld.APP has relied upon the judgment in the case of *Pankaj Agarwal vs. State of Delhi, SC, case No.259-2001, dtd.12-03-2001.*

3. On perusal of papers, it transpires that two questions fall for my consideration, viz.

1. Whether this Court is empowered to take cognizance of case as no any complaint has been filed by the authorised officer ?
2. Whether the alleged offences can be split up or said to be distinct ?

Question No.1 :-

4. Sec.195 of the Code of Criminal Procedure, 1973 [in short 'Cr.P.C.'] provides 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 written of the Public Servant concerned or of same other Public Servant to whom he/she is administratively subordinate.

5. In **Daulat Ram v/s. State of Punjab, 1962 AIR SC 1206**, Hon'ble Supreme Court described the scope of Sec.195 of the Cr.P.C. and held that as per Sec 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.

6. In **M.S. Ahlawat v. State of Haryana, AIR 2000 SC 168**, it is held that "*....Provisions of Section 195 CrPC 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.*"

7. In **Kanjibhai v/s. State on 16 th March, 2010, 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 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."

8. The Hon'ble Gujarat High Court in Cri. Misc. Appln. No.23009 of 2015 ***Nayan Harishbhai Kankhara vs. State of Gujrat***, dtd.18.12.2015 held in para 11 that

"I may also quote the decision of the Supreme Court in the case of *State of Karnataka vs. Hemareddy & Anr.*, AIR 1981 SC 1417 wherein the Supreme Court observed in para-8 as under;

"We agree with the view expressed by the learned Judge and hold 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 Code of Criminal Procedure 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) of the Code of Criminal Procedure should. be upheld."

9. Hence, except written complaint by the concerned, this Court is not empowered to take cognizance of case u/S.188 of the I.P. Code.

10. Whereas judgment as relied by the Ld.APP for the State in the case of *Pankaj Agarwal vs. State of Delhi, SC* is concerned, in that case applicant-accused was charged with Ss.186, 332 & 353 r/w.34 of I.P.C. and the cognizance was take by the Magisrial Court, hence, the applicant-accused reached High Court but be unsuccessful. Lastly, reached to the Hon'ble Apex Court, wherein it is held that cognizance qua the Sec.186 can not be taken, but rest of the sections, there is no any bar. Hence, this judgment is helpful to this Court whereby it is reiterated that cognizance is barred under such offence likewise in our case.

12. Hence, this Court is not empowered to to take cognizance of case as no any complaint has been filed by the authorised officer. Hence, my answer to question No.1 is in 'Negative'.

Question No.2 :-

13. This brings me to the second question that whether the alleged offences can be splited up ? To answer this question, I may quote the relevant observations made in the judgment in the case of *Govardhankumar Thakoredas Asrani V. State of Gujarat, Sp.Cri.Appli.No.2544/2015,D.13.04.2017*, which is as under:

40.2) In the case of *State of Karnataka vs. Hemareddy*, AIR 1981 SC 1417, the Supreme Court held that in thecases 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 section 195(1)(b), Cr.P.C., should be upheld.

14. In *Merubhai Mandanbhai Chandra V. State of Gujarat* The Hon'ble Gujarat High Court in Cr.M.A. No.17286/ 2017, It is held in para-6 that, "Mr. Dave, the learned counsel would submit that the chargesheet is also filed for the offence punishable under Section 504 of the I.P.C. Section 504 of the I.P.C. is not to be found in Section 195 of the Cr.P.C., and therefore, it would be within the powers of the Magistrate concerned to take cognizance of the offence punishable under Section 504 of the I.P.C. I am afraid it is not permissible for this Court to accept the settlement. This aspect has also been well considered by me in the decision referred to above. In the facts of this case, it is not possible to separate the offence punishable under Section 186 with Section 504 of the I.P.C. Both the offences could be said to have been committed in the course of one transaction. If it is not permissible for this Court to split the offences, then the bar of Section 195 of Cr.P.C. would apply even those offences of the I.P.C. which are not falling within the ambit of Section 195 of the Cr.P.C."

15. Considering and applying the above ratio in this case, as per the prosecution case, other offence u/Sec.133 of the Representation of People Act is levelled. As per that offence, whoever illegally hire or procure any conveyance at election shall be punished , on conviction, with imprisonment three months or fine. Once again, this alleged act of the accused is also attached with Sec.188 of the I.P.C & hence, they can not be separated.

16. Looking to the facts and circumstances, those alleged offences are inseparable and can not be split. So the answer of question No.2 is also in 'Negative'.

17. In light of the afore noted decisions and as per the ratio laid down in the Case of *K. Prabhakar Rao v/s. State of A. P.*, decided on 25/11/2014 by the Hon'ble Apex Court, the proceeding of the present Criminal Case should be stopped under S.258 of CrPC on afore said ground. Hence, in view of my answer to question No.1 and legal settled proposition, following order is passed In the **The Special Magisterial Sitting**

O R D E R

Proceedings of the present case is hereby ordered to be stopped u/S.258 of the Cr.P.C. due to bar in taking cognizance u/S.195(1)(a) of the Cr.P.C. and thereby the accused of the present case is released.

Pronounced in the special sitting today.

Date: 11/12/2021
Place: Ahmedabad

(RINKU RAJESHBHAI DESAI)
Addl. Chief Metropolitan Magisterial,
Court No.09, Ahmedabad.
Code No. GJ01089