

CC No. 700/2023

Order Below Exh.1

(1) Perused the record. This case came to be registered on the basis of charge-sheet filed by the I.O. after completion of investigation in the offence registered with **Gadhada** police station for an offence u/s 188, 189 of I.P.C. and Disaster management act 51(A), u/s 3 of The Epidemic Act 1987 On perusing the record, it transpires that the charge-sheet has been filed on the ground that the accused violated the terms of promulgation issued by the District Magistrate, Botad u/s 144 of the CrPC, S.43 of the Gujarat Police Act. 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 u/s 173 of the Cr.P.C. (in short charge-sheet).

(2) Now the question before me is whether it is permissible for a Court to take cognizance of an offence u/s 188, 189 of I.P.C., Disaster management Act 51(A), u/s 3 of The Epidemic Act 1987 in light of the bar imposed by Section 195 of Cr.P.C. The answer, in this case would squarely be a big no. because Section 195 of Cr.P.C. is a mandatory provision and therefore, the Magistrate 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. 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.

(3) Coming over to another offence alleged against the accused i.e. Section 189 of the I.P.C. In this case also it is imperative to discuss the observation made in **Durgacharan Naik Vs. State of Orissa, 1966 Cri LJ 1491: AIR 1966 SC 1775; Basir-UI-Haq Vs. State of W.B., 1953 Cri LJ 1232: AIR 1953 SC 293; Oduvil Devaki Amma Vs. State of Kerala, 1981 KLT 475: 1982 Cri LJ (NOC) II (Ker); Ashok Vs. State, 1987 Cri LJ 1750 (Bom); N.H. Nanjegowda Vs. State of Karnataka, 1988 Cri LJ 807 (Kant), Govardhankumar Thakordas Asrani Vs. State of Gujarat Cr.M.A 24632 of 2015 (J.B.Pardiwala. J.), Soni Dineshkumar Dahyalal Vs. State Of Gujarat Cr.M.A. 17270 of 2012 (J.B.Pardiwala J.), Nikhilbhai Kesubhai Patel Vs. State of Gujarat Cr.M.A. 8451 of 2018 (J.B.Pardiwala J.)** It has been observed in the above cases that the provision of Section 195 cannot be evaded by resorting to device of camouflage. For instance, the provisions of the Section cannot be evaded by the device of

charging a person with an offence to which that Section does not apply, and then convicting him of an offence to which it does.

(4) However, 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 [Basapoa Ningandowda, 1978 Cri LJ 460, 469 (kant); see also, Chandra Kishore Jha Vs. State of Bihar, 1975 Cri Lj 1939 (Pat)].

(5) After perusing the above mentioned position of law, it transpires that the alongwith Section 188, 189 of the I.P.C., in the present case by the concerned police official

is nothing but an attempt to evade the provision of Section 195 of Cr.P.C. by resorting to devices of camouflage. Therefore, to take a roundabout route, Section 189 of the I.P.C. *prima facie* seems to have been added in the case so that the police official does not have to file a private complaint. Be whatsoever it may be, in light of the above discussed observations made in the case laws cited above, even if Section 189 of the I.P.C. was applicable in the case, it is not open to this Court to proceed with the trial of this offence (i.e. u/s 188,189 of I.P.C) only by dropping charges for other offence (i.e. Section 188,189 of the I.P.C) attracting Section 195 of the Cr.P.C.

(6) It is a provision similar to that of Section 195 of Cr.P.C. and lays down that no Court shall take cognizance of an offence under this Act except on a private complaint. Therefore, in this case also Section 195 of the Act bars cognizance of an offence punishable u/s188,189 of the Act.

(7) In the end, In light of the aforesaid decisions and the facts of the above case it is clear that the I.O. 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 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

Apex Court, the proceeding of the present Criminal Case should be stopped as this Court is lacking the jurisdiction. Hence, the final order is made as under:

ORDER

(1) The present Criminal Case is hereby disposed of by way of stop proceeding u/s 258 of Cr.P.C. and the accused is hereby discharged.

Pronounced in special sitting open court today.

Date:13/05/2023

(ARUN. J. VASU)

Addl. JMFC,

Gadhada

CODE : GJ01397