

MHBU070014212020



ORDER BELOW EXH. 1

1. The present charge-sheet has been presented for the offence punishable under section 188, 379, 269 and 270 of the Indian Penal Code, for alleged disobedience of the order of District Magistrate, Buldhana passed in the back drop of outbreak of a pandemic, that is, COVID 19.

2. Section 195(1) of the Code of Criminal Procedure bars the court from taking cognizance of an offence under section 188 of Indian Penal Code or abatement or attempt to commit the same, unless, there is written complaint by the public servant concerned for contempt of his lawful order.

3. In the case at hand , FIR has been lodged by P.H.C. Shri. Mobin Shaha and not the District Magistrate, Buldhana or some other Public servant to whom he is administratively subordinate. Thus, this court cannot take cognizance of aforesaid offence. The conclusion so drawn by me find support from the decision of the (Hon'ble Apex Court in the case of C. Munniappan and Ors. Vs. state Of Tamilnadu (2010) 9 SCC 567). The same view has been reiterated by our Hon'ble High Court and very recently by the Hon'ble Madras High Court in the case of (Shrinath Gangadhar Giram Vs. State Of Maharashtra 2017 (2) AIR (Bom) R (Cri)13 and Shamsul Huda Bakul Vs. State and Ors. in Criminal M.P. No. 4258 and 4259 of

2020 decided on 26/06/2020) receptively.

4. In view of the above, this court cannot take cognizance of the offence under section 188 of Indian Penal Code. Therefore, cognizance is declined in respect of said offence. This court to take cognizance only in respect of section 379, 269 and 270 of the Indian Penal Code. Hence, I pass Following order;-

ORDER

1. The prayer for taking cognizance of offence under section 188 of the Indian Penal Code, is rejected.
2. Issue process against the accused for Offence Under section section 379, 269 and 270 of the Indian Penal Code.

Sd/-

Date: 07/01/2022

(Smt. V. D. Salve)
Judicial Magistrate F.C.
2nd Court, Shegaon.

CNR No. MHBU070014212020

R.C.C. NO.214/2020
State-vs-Rajendra Hursal

Certificate

I affirm that the contents of this PDF file order are correct word to word as per the original order.

Name of Steno: K.S.Deshmukh, Grade-III(ad-hoc)

Name of Court: Judicial Magistrate F.C. 2nd Court,Shegaon

Date: 07.01.2022.