

Order Below Exhibit 1 in S.C.C 440/2021

1. In present case Investigation officer, after due investigation, filed a final report under Section 173 of the Code of Criminal Procedure for the Offence punishable under Section 188, 269, 270 of the Indian Penal Code & Section 65(E), 75, 81, 82, 83 of the Maharashtra Prohibition Act.

2. Section 188 of the Indian Penal Code provides Disobedience to order duly promulgated by Public Servant. Therefore, in present scenario, Court has to take cognizance as per the procedure laid down by the Code of Criminal Procedure. The mode of taking cognizance in respect of Section 172 to 188 of the Indian Penal Code is provided under Section 195(1)(a) of the Code of Criminal Procedure.

3. Section 195(1)(a) of the Code of Criminal Procedure read as under,

No court Shall take cognizance-

1(a)(i) of any offence punishable under Section 172 to 188 of the Indian Penal Code, or

(ii) Of any abetment of, or attempt to commit, such offence, or

(iii) Of any criminal conspiracy to commit such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

4. Therefore, if the offence is committed by any person under Section 172 to 188 of the Indian Penal Code, the concerned public servant has to

file a written complaint against the accused. Without written complaint by concern public servant, magistrate has no power to take cognizance in respect of offence punishable under Section 172 to 188 of the Indian Penal Code.

5. In present case, accused is charge-sheeted for the offence punishable under Section 188 of the Indian Penal Code, as he disobeys the directions promulgated by the Collector. Therefore, in case in hand, the Collector or some other public servant to whom he is administratively subordinate, is required to file a written complaint against the accused for the present offence. As there is no written complaint filed by the Collector, in present case, this court has no power to proceed and take cognizance for the offence punishable under Section 188 of the Indian Penal Code. The words “No Court shall take cognizance” have been interpreted on more than one occasion by Hon’ble Apex Court, which show that there is an absolute bar against the Court taking cognizance except in the manner provided by the Section 195 itself.

6. As the Magistrate has no power to take cognizance without the written complaint, the question of acquittal or conviction does not arise. Therefore, in present situation, proceedings need to be dropped against the accused and accused is entitled to discharge from the offence Section 188 of the Indian Penal Code, as the non-compliance of the Section 195 of the Code of Criminal Procedure. However, investigation officer duly investigated the offence and after finding substance of accusation against the accused he filed a final report. Therefore, mere procedural defect

should not be resulted into prejudice to the prosecution. Hence, prosecution has every right to lodge a written complaint against the accused as per Section 195 of the Code of Criminal Procedure. Hence, I pass the following order.

Order

1. Proceeding against the accused for the offence punishable under Section 188 of the Indian Penal Code is dropped, without prejudice to prosecution's right to lodge complaint by the concerned public authority.
2. Case be proceed further in respect of 269, 270 of the Indian Penal Code & Section 65(E), 75, 81, 82, 83 of the Maharashtra Prohibition Act against the accused.

Date: 11.09.2025

**[Shri. M.S.Bharad]
Judicial Magistrate,F.C.
Court No 01,Deulgaonraja.**

Rupesh Ashok Dandge,
Stenographer