

**Order Below Exhibit : 1**

1. The investigating agency filed the charge-sheet on the ground that the accused violated the terms of promulgation issued by the Police Commissioner of Surat and Home Department of Gujarat and accused had committed the crime under Section 188 of Indian Penal Code, 1860.
2. This Court perused the provision of Chapter XIV of Code of Criminal Procedure, 1973 regarding conditions requisites for initiation of proceedings. The Magisterial Court can take cognizance of offences under Section 190 of Cr.P.C reads as under:

*"Section-190 - (1) **Subject to the provisions of this Chapter**, any Magistrate of the first class, and any Magistrate of the second class, specially empowered in this behalf under sub-section (2), may take cognizance of any offence-*

*(a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts;*

*(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. 2. The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.*

3. This Court has Perused the above-mentioned section in which it is stated that the Magistrate can take the cognizance subject to the provision of this Chapter i.e. Chapter XIV hence, in Section 195 of CrPC, 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 written of the public servant concerned or of some other public servant to whom he is administratively subordinate.
4. The Hon'ble High Court of Gujarat in Case of **Kanjibhai Babldas Patel & Ors. vs. State** on 16<sup>th</sup> March, 2010 Criminal Misc. Application No. 348 of 1995 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 there under, read with Section 2(d) of the Code, it was not permissible for the Ld. Judicial Magistrate to take cognizance of the offence in question on the basis of a charge-sheet filed pursuant to the FIR 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, 1980 except on a complaint in writing by the Public Servant concerned or some other public servant to whom he is administrative subordinate. The Hon'ble Delhi High Court In **Arvind Kejriwal & Ors. vs. Amit Sibal & Anr., Criminal Misc. Application No. 18920/21/2013**, it was held by that, if, the Trial Court proceeds to drop the proceedings qua petitioners, then the Apex Court's decision in **Adalat Pradad V/s. Rooplal Jindal & Ors. (2004) 7 SCC 338** would not stand in the way of Trial Court to do so. The Hon'ble Supreme Court described the scope of Section 195 of the Code of Criminal Procedure, 1973 in the case of **Daulat Ram V/s State of Punjab, 1962 AIR 1206** 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.

5. In light of the afore mention decisions and as per the ratio laid down by the Hon'ble Apex Court in the case of **K. Prabhakar Rao v/s. State of A. P.** , decided on 25/11/2014, this court cannot proceed in this present Criminal Case as this court is lacking the jurisdiction. Hence, present Criminal Case is disposed of as dismissed. The Muddamal, if any, seized by the authorities in this case, is hereby ordered to be disposed of as per the provisions of Criminal Manual.

Pronounced & Signed in open Court on dated 30 September 2021.

**Place: Surat**

**Date: 30/09/2021**

**(R.M.Chavda)**

**J.M.F.C (3<sup>rd</sup> Court)**

**Judge Code: GJ01524**