



**Order Below Exh.1 in R.C.C. No.39/2021**  
**State versus Sachin Patil and ors.**  
**(CNR No.: MHKO030082862020)**

In this matter, the final report is filed under section 173 of Code of Criminal Procedure in the form of Charge-sheet. The offence alleged is punishable under Section 188, 143, 269, 270, 290 read with 149 of Indian Penal Code, Section 51(b) of National Disaster Management Act (in short "the Act"), Section 11 of Maharashtra Covid-19 Measures and Rules-2020 (in short "the Rules"), Sections 2, 3, 4 of the Epidemic Diseases Act, 1897 and Section 135, 131(n) of the Maharashtra Police Act.

2. I have gone through the record. So far as, taking cognizance of the offence punishable under Sections 143, 269, 270, 290 read with 149 of the Indian Penal Code and Sections 135, 131(n) of the Maharashtra Police Act, this court has power to take cognizance. So, there is no hurdle to issue process under those sections.

3. So far as, taking cognizance of offence punishable under Section 188 of the Indian Penal Code is concerned, according to prosecution, the accused has disobeyed the order of District Collector, Kolhapur, which was issued from time to time. According to prosecution accused has disobeyed order of District Collector, Kolhapur, therefore, report lodged by informant P.N. V. D. Jadhavar. As per said report crime No.1414/2020 came to be registered against accused for the offence punishable under section 188 of Indian Penal Code. After investigation Charge-sheet is filed.

4. The offence punishable under section 188 of Indian Penal Code is non-cognizable offence. There is bar provided under Section 195 of Code of Criminal Procedure to take the cognizance for aforesaid offence. For the convenience it is necessary to reproduce Section 195 of Code of Criminal Procedure here.

Section 195 – Prosecution for contempt of lawful authority of public servants, for offences against public justice and for the offences relating in documents given in evidence -

(1) No Court shall take cognizance -

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), 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.

- (2) XXXXX
- (3) XXXXX
- (4) XXXXX

5. From plain reading of Section 195 of Code of Criminal Procedure it made clear that unless the complaint filed by the public servant or of some other public servant to whom such public servant is administratively subordinate, Court can not take cognizance for the offence punishable under Section 188 of the Indian Penal Code. Under this Section the public servant whose order is disobeyed, such public servant has to file complaint before the Court or other public servant to whom such public servant is administratively subordinate has to file complaint before the Court, and then only Court is empowered to take the cognizance for the offence punishable under Section 188 of Indian Penal Code. Under this Section the public servant who promulgated order and his order disobeyed by someone, then he can file complaint in the Court for such disobedience. Other public servant to whom such public servant who has promulgated order is administratively subordinate can also file complaint to the Court. The phrase is used in this Section that “or of some other public servant to whom he is administratively subordinate”. It means the public servant whose order is disobeyed can himself file complaint and his subordinate public servant can not file complaint, but the public servant to whom he is administratively subordinate can file complaint. This provision made it clear that the Superior Public Servant of such public servant whose order is disobeyed can file complaint and his subordinate can not file such complaint.

6. Therefore, it is clear that when the order of public servant is disobeyed as per Section 188 of Indian Penal Code, such public servant or his Superior Public Servant to whom he is administratively subordinate can file complaint before the Court and then only the Court is empowered to take the cognizance for the offence punishable under Section 188 of Indian Penal Code. According to the Prosecution there is order promulgated by District Collector, Kolhapur and it is disobeyed by accused. In such situation the Court can take the cognizance only if complaint filed by District Collector, Kolhapur himself or other public servant to whom District Collector, Kolhapur is administratively subordinate. In the present matter no such complaint is filed by proper public servant or authority. The offence is registered as per report lodged by informant who has no right to lodge such report. The offence is non-cognizable and there is specific bar under Section 195 of Code of

Criminal Procedure to take cognizance of the offence punishable under section 188 of the Indian Penal Code. Therefore, this Court is not empowered to take cognizance on the basis of present final report filed under Section 173 of Code of Criminal Procedure for the offence punishable under Section 188 of the Indian Penal Code. Hence, the present proceeding, so far as section 188 of the Indian Penal code is concerned, is required to be dropped.

7. So far as Section 51(b) of the Act is concerned, Section 60 of the Act, needs to reproduced here:-

*As per section 60 of the Disaster Management Act, No court shall take cognizance of an offence under this Act except on a complaint made by-*

*(a.) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or*

*(b.) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid."*

8. As per said Section 60 of the Act also the cognizance of an offence under the Act, the Court cannot take cognizance unless the complaint is made by a competent person or other mentioned in said section. In the present case, allegation is about disobedience of the order of District Collector, Kolhapur during pandemic of Covid -19 but the present final report is filed by police officer and not by the District Collector, Kolhapur. So, in view of the section 60 of the Act, the cognizance of Section 51 (b) of the Act cannot be taken.

9. So far as Section 11 of the Covid 19 Regulation : any person/institution/organization found violating any provision of these regulations shall be deemed to have committed an offence punishable under Section 188 of IPC. Empowered officers may penalize any person/institution/organization found violating provisions of these regulations or any further orders issued by Government under these regulations. So the offence punishable under Section 11 of the Rules is also covered under Section 188 of IPC. Coming to cognizance of an Act

under Section 188 of IPC, this Court cannot take cognizance as discussed above. Hence, cognizance of act punishable under Section 11 of the Rules, cannot be taken.

10. So far as Sections 2 and 4 of Epidemic Act (in short "the Act"): these are not punitive provisions. Section 3 of the Said Act provides penalty to any person, who disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code. So the offence punishable under Section 3 of the Act is also covered under Section 188 of IPC. Coming to cognizance of an Act under Section 188 of IPC, this Court cannot take cognizance as discussed above. Hence, cognizance of act punishable under Section 3 of the Act, cannot be taken. Hence, I proceed to pass the following order.

**ORDER**

1. Issue process under Section 204 of the Code of Criminal Procedure only for the offence punishable under Section 143, 269, 270, 290 read with 149 of the Indian Penal Code and Sections 135, 131(n) of the Maharashtra Police Act.
2. So far as Section 188 of the Indian Penal Code and Section 51(b) of National Disaster Management Act, Section 11 of Maharashtra Covid-19 Measures and Rules-2020 (in short "the Rules") and Sections 2, 3, 4 of the Epidemic Diseases Act, 1897 is concerned, the concerned authority has liberty to take appropriate or necessary steps or action according to Law.

Date : 22.01.2021  
Kolhapur.

(V. H. Khedkar)  
J.M.F.C. Kolhapur.