

<u>CNR MHNS130002542024</u> 	<u>S.C.C. No.124/2024</u> State Vs. Kamalabai Wagh
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ORDER PASSED BELOW EXH.1 IN S.C.C. No.124/2024

1. Perused the record of the case. Accused is facing trial for the offence punishable under Section 188 , 272, 273 of Indian Penal Code.
2. The prosecution has not secured the presence of accused till date. Therefore, I find that, it is not possible to secure the presence of accused in near future. So considering these facts and circumstances, it will not be a just and lawful to keep this matter pending further. Under such circumstances, no good purpose would be served by keeping this matter pending. Hence, this is fit case to invoke the power under Section 258 of the Code of Criminal Procedure.
3. Moreover, the police has filed final report against the accused for the offence punishable under Section 188 of Indian Penal Code.
4. Section 172 to 188 (both inclusive) of the Indian Penal Code comes under chapter X of Indian Penal Code. Section 195(a)(i) of the Code of Criminal Procedure Code contemplates that 'No Court shall take cognizance of any offence punishable under Section 172 to

188 of the Indian Penal Code except on the complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate'.

5. Section 2(d) of Code of Criminal Procedure Code defines 'complaint' means any allegation made orally or in writing to the Magistrate, with a view to his taking action under this code, that some person whether known or unknown, has committed an offence, but does not include a police report.

6. Section 2(r) of Code of Criminal Procedure Code defines 'police report' as report forwarded by a police officer to the Magistrate under Sub-section (2) of Section 173 of Code of Criminal Procedure Code.

7. In short Magistrate does not have powers or right to take cognizance under Section 188 of the Indian Penal Code upon final report. In the present case the public servant has filed F.I.R. against accused. It was obligatory on the part of public servant to file the complaint before the Magistrate so as to take cognizance under Section 188 of Indian Penal Code.

8. Thus, in view of provisions under Section 195(a)(i) of Code of Criminal Procedure this Court is barred to take cognizance of the offence punishable under Section 188 of the Indian Penal Code. Therefore, the following order is passed;

ORDER

1. The proceeding is stopped vide Section 258 of the Code of Criminal Procedure for accused subject to Section 300(5) of Cr.P.C..
2. Recall the summons.

Dated : 24/06/2026

**(P.D.Kolekar)
Judicial Magistrate First Class,
Pimpalgaon(B)**