

ORDER BELOW EXH.NO.1 IN SCC NO. 770
OF 2022

1] Perused the record and heard learned APP for the prosecution on the point of the procedural lacunae in the present matter.

2] The present charge sheet has been filed for offences punishable u/sec.188, 269, 270 of I P C, u/sec. 2, 3 & 4 of Epidemic Diseases Act, 1887 and Section 51 B of Disaster Management Act 2005 alleging that, the Accused was found without mask in violation of the duly promulgated order of Hon'ble District Magistrate and President of District Disaster Management Committee, Nashik. It is also seen that, this Court has taken cognizance vide order on Ex. 01.

3] However, in view of Sec.195 Cr P C, the Court cannot take cognizance of the offence u/sec.188 IPC, unless there is a "complaint" filed by the concerned public servant whose order is alleged to have been violated or by his subordinate.

4] When the present record is perused on the background of this legal position, it can be seen that, in the present matter, "complaint" is not filed by the concerned public servant or his subordinate or the concerned Authority. Therefore, cognizance u/s 188 of I.P.C cannot be taken.

5] It is also seen that, investigation in the present matter is not conducted by Police Inspector as is expected vide Sec.3 A(ii) of Epidemic Diseases Act, 1887. Hence, it can be seen that, there are such lacunae in the present matter that, its cognizance is

barred. The case becomes untenable and liable to be dropped.

6] As regards the offences u/sec.269 & 270, it is sufficient to mention that, the only allegation against the Accused is that he failed to wear a mask. It has nowhere been mentioned that, he had any symptoms of Covid-19. So, the essential ingredients of the aforesaid offences are not made out even prima facie. Therefore, I have arrived at the conclusion that it would be just and proper to stop the proceeding in the present matter vide Section 258 of Cr. P.C. Hence, I pass following order,

ORDER

The proceeding in the present matter against the Accused is/ are hereby stopped vide Sec.258 of Cr P.C.

(S. R. Nikam)

Dt.09-11-2022.

Nyayadhhikari, Gramnyalay,
Tryambakeshwar, Nashik.