

**IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN MAGISTRATE
22nd COURT, ANDHERI, MUMBAI.**

ORDER BELOW EXH-1 IN C.C. NO. 1867/MISC/2022

1. The matter is on today's board, in the Special Drive as it has been reported by the MIDC police that the case can be disposed of in Special Drive, as there is no sanction (compliance of pre-condition of complaint in writing by public servant) in this particular case.

2. The present matter is at 'first order' stage. The offence is punishable u/s. 188 and section 270 of the I.P.C. and section 51(b) of Disaster Management Act, 2005 r/w section 3 of the Epidemic Disease Act, 1897 and as per provisions of Section 195(1) of the Cr.P.C. this Court cannot take cognizance of the offence, until and unless there is a complaint in writing of the public servant concerned i.e. the Commissioner of Police, Mumbai. In this particular case there is no complaint of such public servant or anybody authorized by him, in writing, in his behalf, as provided in Sub-Section (a)(i) of 195(1) of the Cr.P.C. and therefore there is bar in taking cognizance.

3. It is pertinent to note here that, once this Court does not have power to enquire or to try particular case, due to the absence of sanction of this nature, then the obvious consequence is to discharge the accused u/s. 258 of the Cr.P.C. by stopping of the proceeding. It has to be held that the prosecution was void ab-initio.

4. Now, this provisions of Section 195(1) of the Cr.P.C. are mandatory. The word that is used, is, "shall" and therefore non-compliance of it, would vitiate the prosecution and/or other consequential orders passed by this Court, after it has taken the

cognizance. This is because the provision of Section 195(1) of the Cr.P.C. itself, provides that not only the trial cannot be held, no inquiry can be done. Even it means, that there is a bar to take cognizance of such offence and therefore written complaint of the authority i.e. public servant is a pre-condition for taking cognizance of the offence and therefore this Court is hereby of the opinion that accused should be discharged by stopping the proceedings u/s. 258 of the Cr.P.C. However, this fact was not raised, any time herein before, and this issue of requiring a pre-condition was not taken cognizance of, by this Court, eventually resulting in taking cognizance and proceeding further. Now, once cognizance taken but proceeding further no charge is framed and no evidence is taken hence, this Court will have to only discharge the accused, as proceedings are deemed to be vitiated.

5. In the case of **Ramji Bhika Koli and Others Vs. State of Gujarat(1999 Cri. L.J. 1244)** wherein, His Lordship of the Hon'ble Gujarat High Court has observed that, *if the offence is taken place in single transaction and integral part of offence constituting and made punishable under section 186 of the Indian Penal Code, they cannot be split out.* The Hon'ble His Lordship has further observed that “*the offences punishable under Sections 143, 147, 148, 149, 332, 333 and 307 of the Indian Penal Code cannot be split from the complaint for a separate offence in the facts and circumstances of the present case and thereby cognizance in respect of said offences are also barred under section 195(1) (a)(i) of the Code as held by the Hon'ble Supreme Court in the case of Station of Uttar Pradesh V/s. Sureshchandra Shrivastav (AIR 1984 SC 1108)*”.

6. The offences punishable under sections 188 and section 270 of the I.P.C. and section 51(b) of Disaster Management Act, 2005 r/w section 3 of the Epidemic Disease At, 1897 of the Indian Penal Code are committed in a single transaction and they are integral parts of each other. Therefore, they cannot be split out. Therefore, in my view, no case is made out against the accused and this Court has no power to take cognizance without the complaint of the competent public servant. The proceeding is barred under section 195(1)(a)(i) of the Code. In the result, following order is passed.

ORDER

- 1 The proceedings are held to be vitiated, due to absence of complaint in writing of the public servant concerned as required by provisions of section 195(1) of the Cr.P.C., and proceedings are hereby stopped.
- 2 Accused person is hereby discharged, u/s. 258 of the Cr.P.C.
- 3 Matter disposed of in Special Drive.

Sd/-
(A. A. Panchbhai)
Addl. Chief Metropolitan Magistrate,
22nd Court, Andheri, Mumbai.

Date:- 02.05.2022