

ORDER BELOW EXH.1 ::-

(1.0) On perusal of the record of the present case, it transpires that, F.I.R. under Section - 154 of Cr.P.C has been registered against the accused for the alleged offence U/s - 188 of the Indian Penal Code. Thereafter, investigating officer has carried out an investigation and filed charge-sheet under Section- 173 of Cr.P.C for the above mentioned offence only. Investigation Agency filed the Charge-sheet on the ground that accused violated the term of promulgation issued by the concerned authority and committed the crime under Section- 188 of the Indian Penal Code, 1860. In section- 195 of the Code of Criminal Procedure, 1973, it is clearly provided that no Court shall take cognizance of offence punishable under Section 172 to 188 (Inclusive of both Section) of the Indian penal Code, 1860, except on the complaint in writing by the public servant concerned or of some other public servant to whom he/she is administratively subordinate.

(2.0) In **Daulat Ram v/s. State of Punjab, reported in 1962 AIR 1206**, Hon'ble Supreme Court described the scope of Section- 195 of the Code of Criminal Procedure, 1973, 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 can not be maintained.

(3.0) In **Gaurishankar Jha v/s. Chintanath Jha**, Hon'ble Patna High Court held that if, it appears that when the cognizance has been taken on the defect of want of jurisdiction or absence of sanction crops up, then the court should not proceed with the trial. If, witness have been produced by both sides when a court has no jurisdiction or there is inherent want of sanction, the prosecution becomes bad, illegal and without jurisdiction. **All proceedings are to be**

dropped or complaint has to be dismissed but definitely no order of acquittal or discharge can be passed.

(4.0) In the case of **Kanjibhai v/s. State, on 16th March, 2010. Criminal Misc. Application no.348 of 1995**, Hon'ble Gujarat High Court 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 thereunder, read with section-2(d) of the Code, it was not permissible for the learned Judicial Magistrate to take cognizance of the offence in question on the basis of a charge-sheet filed pursuant to the First Information Report lodged by the respondent No.2. In light of the provisions of section 195(1)(a), the Court could not have taken cognizance of the offence under section 188 of the Indian Penal Code, 1860, except on a complaint in writing by the Public Servant concerned or some other Public Servant to whom he/she is administratively subordinate.

(5.0) In the case of **Arvind Kejriwal & Ors. v/s. Amit Sibal & Anr., Criminal Misc. Application no.18920-21/2013**, it was held by the Hon'ble Delhi High Court that, If the trial Court proceeds to drop the proceedings qua petitioners, then the Apex Court's decision in *Adalat prasad v/s. Rooplal Jindal and Ors., reported in 2004 (7) SCC 338* would not stand in the way of trial court to do so.

(6.0) As per the ratio laid down in the case of **P. D. Lakhani & Anr. v/s. State of Punjab & Ors., reported in AIR 2008 SC (Supp) 1825**, the Hon'ble Apex Court has observed that a cursory reading of Section- 195(1) (a) makes out that in case a Public Servant concerned who has promulgated an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the Superior Public Servant to whom the officer who initially passed of the order promulgated by his subordinate, to file a complaint.

(7.0) In light of the above noted decisions and as per the ratio laid down in the case of **K. Prabhakar Rao v/s. State of A. P.**, decided on 25/11/2014 by the Hon'ble Apex Court, the proceeding of the present Criminal Case should be stopped as this Court is lacking the jurisdiction, because cognizance of the said section can not be taken on the basis of Charge sheet. Upon the discussion of following provisions of law and judgments propounded by the Apex Court as well as various Hon'ble High Courts, this Court passes the following final order.

-:: FINAL ORDER ::-

The prosecution of the offence punishable u/s - 188 of the Indian Penal Code is hereby dropped against the accused without going into the merits of the case. Accordingly, the present Criminal Case is disposed of as dismissed.

Concern authority is at liberty to file complaint U/s 2(d) of Cr.P.C before the jurisdictional Court as per the provision of law.

Order passed in the Open Court today on **10th** day of July, 2021

Date :10/07/2021

Dashrathsinh Jalamsinh Parmar
28th Additional Senior Civil Judge &
Additional Chief Judicial Magistrate
Vadodara.

GJ01171