

**COMMON ORDER BELOW EXHIBIT 01 IN SCC No. 12586 /2020
to 12672/2020**

In view of letter and directions issued by Hon'ble District and Sessions Court, Pune in letter bearing No. Gen-1296/2022 dtd. 01.02.2022 regarding directions to conduct Special Drive from 7th March to 11th March, 2022 to dispose of cases u/sec. 256 and 258 of Code of Criminal Procedure. Therefore, cases are taken on today's board.

[2] Summary Criminal cases bearing registration numbers 12586/2020 to 12672/2020, involves common question of facts and law, hence, in order to avoid repetition and to save precious time of the court, above mentioned cases are taken up together for decision.

[03] Police Constable has filed this private complaint along with affidavit under Section 200 of the Code of Criminal Procedure, 1973 (for short 'the CRPC') against the accused for the alleged commission of an offence punishable under Section 188 of the Indian Penal Code (for short 'the IPC'). The complainant affirmed that the accused has breached the order promulgated by the public servant and thereby he has committed an offence punishable under Section 188 of the IPC and prayed for issuance of process.

[04] Record shows that the complainant has not filed the copy of the Order promulgated or notification issued by the public servant. There is nothing on record whose order, the accused has breached.

[05] In order to prevent violation of promulgation / notification issued by the Dist. Magistrate/ Commissioner of Police Pimpri Chinchwad regarding the implementation of complete lock-down due to spread of Covid-19 pandemic, Section 188 of the IPC has come into light. It is the penal provision which is invoked in case of non-compliance of the guidelines or directives contained in the notification issued by the Competent Authority. In the present circumstances, it is necessary to understand this provision and its implications.

[06] Section 188 IPC covers an offences related to “contempt of lawful authority of public servants”. The provision specifically deals with the offence of disobedience to an order duly passed by a public servant. As per this provision, any person who has the knowledge of an order passed by a competent public servant, by which he is directed to abstain from doing any act or certain direction with respect to property possessed or held by him, disobeys such direction, he shall be liable to be punished under this Section. However, Section 195(1)(a) of the CRPC provides that no Court shall take cognizance of any offence punishable under Section 172 to 188 of the IPC except on a written complaint of the concerned public servant or of his superior. Along with barring private complaints, it also expressly bars a court from taking cognizance of this offence under Section 190 of the CRPC, on the basis of final report by the police. Even in the case of *C. Muniappan and Others Vs State of Tamilnadu*, the Hon’ble Supreme Court of India held that in a case where charge is under Section 188 of the IPC, cognizance by the court under Section 195(1)(a) of the CRPC, can only be taken on the basis of a complaint in writing by the public servant whose lawful order had

been contravened, or on the complaint of his superior, and if not, the whole proceedings will stand vitiated and will be liable to be set-aside. Hence, the provision of Section 195(1)(a) of the CRPC being mandatory, any non compliance thereto would necessarily vitiate the entire prosecution.

[07] Record is silent to show that whose order is contravened by the accused. Who has promulgated the order or issued notification. Assuming for the time and by taking judicial notice of the pandemic situation, various order/s of promulgation / notification is issued by the District Magistrate / SDO / Tahasildar/Commissioner of Police / Superintendent of Police regarding the implementation of compete lock-down due to spread of Covid-19 pandemic in the Pimpri Chinchwad, Pune area but the complaint is not filed by the concerned public servant i.e. Disst. Magistrate / SDO / Tahasildar or by his superior officer as required by Section 195(1)(a) of the IPC so as to get the jurisdiction to take cognizance under Section 190 of the CRPC. Hence, the complaint filed by the police constable is suffers from inherent lack of jurisdiction or competence to file it before this Court as provide under Section 195(1)(a) of the CRPC.

[08] In view of the law laid down by the Hon'ble Apex Court in the case of *Muniappan and Others Vs State of Tamilnadu*, issuance of process on the basis of complaint which is not filed by the competent authority will certainly vitiate the proceedings and trail of the accused for the alleged commission of an offence punishable under Section 188 of the IPC would be an abuse of process of law and such procedure is uncalled for. Hence, in view of above discussion, the complaint is liable to be dropped. Hence,

following order is passed.

ORDER

The Complaint is disposed of as dismissed under Section 203 read with Section 256 of Code of Criminal Procedure, 1973.

Pimpri, Pune
Dated : 08.03.2022

(R. M. Giri)
Judicial Magistrate First Class,
Pimpri, Pune

CERTIFICATE

“ I affirm that the contents of this P. D.F. file Judgment / Order are same word for word as per original Judgment.

Name of Steno : Smt. K. U. Pawar

Court Name : Shri. R. M. Giri
Judicial Magistrate Class,
Pimpri, Pune.

Date of Decision : 08.03.2022