

Criminal Case No.323/2022

Order Below Exhibit -- 1

(1) Perused the record. In this Case Investigating Agency has filed the Chargesheet against the accused under Section 188, 269,270 of the Indian Penal Code, 1860 and sections 131,135 of G.P Act, Sec.51(b) of Disaster Management Act, 2005 and Sec. 3 of Epidemic Diseases Act, 1897 on the basis of First Information Report lodged against the accused under the same sections. On perusing the record, Investigation Agency filed the Chargesheet on the ground that accused violated the term of promulgation issued by the District Superintendent of Police/ District Collector, and committed the crime under Section 188, 269,270 of the Indian Penal Code, 1860 and sections 131, 135 of G.P Act.

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 Sections) of the Indian Penal Code, 1860 on the Complaint in written of the Public Servant concerned or of same other Public Servant to whom he/she is administratively subordinate.

This court has given an opportunity to the Ld. Public Prosecutor for the state and Ld. Public Prosecutor has relied upon the judgment in the case of Pankaj Agarwal vs. State of Delhi, SC case No. 259\2001 dtd. 12-03-2001.

(2) In **Daulat Ram v/s. State of Punjab, 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 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 cannot be maintained.

(3) In Gaurishankar Jha v/s. Chintanath Jha, Hon'ble Patna High Court held that if, it appears that when the cognizance has been taken and 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) In Kanjibhai v/s. State on 16th March, 2010, Criminal Misc. Application No. 348 of 1995, Hon'ble High Court of Gujarat 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 Chargesheet filed pursuant to the First Information Report lodged by the Respondent NO.2. In light of the provision 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) In 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 Pradad v/s. Rooplal Jindal and ORs. (2004) 7 SCC 338** would not stand in the way of Trial Court to do so.

(6) 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. The said decision is squarely applicable to the facts of the present Case.

(7) Now, if we carefully read the Section 60F of Disaster Management Act, 2005, It says **Sec.60 Cognizance of offences**

No court shall take cognizance of an offence under this Act except on a complaint made by-

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be;or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and the intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.

(8) Now, if we carefully read the Section 3 of Epidemic Diseases Act, 1897, It says **Sec. 3 Penalty,**

(1) Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860) . Therefore the discussion made above in reference to section 188 of Indian Penal

Code shall apply to the section 3 of Epidemic Diseases Act, 1897 .

(9) Coming over to another offence alleged against the accused i.e. Section-135,131 of Gujarat Police Act,1951. In this case also it is imperative to discuss the observation made in Durgacharan Naik Vs. State of Orissa, 1966 Cri LJ 1491: AIR 1966 SC 1775; Basir-Ul-Haq Vs. State of W.B., 1953 Cri LJ 1232: AIR 1953 SC 293; Oduvil Devaki Amma Vs. State of Kerala, 1981 KLT 475: 1982 Cri LJ (NOC)II (Ker); Ashok Vs. State, 1987 Cri LJ 1750 (Bom); N.H. Nanjgowda Vs. State of Karnataka, 1988 Cri LJ 807 (Kant). It has been observed in the above cases that the provision of Section-195 cannot be evaded by resorting to device of camouflage. For instance, the provisions of the Section cannot be evaded by the device of charging a person with an offence to which that Section does not apply, and then convicting him of an offence to which it does.

(10) In the case of Govardhankumar Thakoredas Asrani vs. State of Gujarat, sp. criminal Appli. No. 2544/2015 dtd. 13-04-2017 it was decided by the Honb'le Gujarat High Court that,

39. It is true that Section 195 of the Code does not bar the trial of an accused for a distinct offence disclosed by the same set of facts and is not so stated therein. Section 195 also does not provide further that if in the course of the commission of that offence, the other distinct offences are committed, the court concerned is debarred from taking cognizance in respect of those offences as well. However, if the perusal of the first information report and other papers of the charge-sheet makes it clear that the offence under Section 186 or 188 of the IPC, as the case may be, is closely interconnected with the other distinct offences and cannot be split up, then, in such circumstances, the bar of Section 195 of the Cr.P.C. will apply to such other distinct offences also.

However, when a single act of the accused is of such a character as to amount to two distinct offences, one which is covered by Section-195 and the other which is not, it is open to the person aggrieved thereby to lodge a private complaint of the latter offence, and cognizance of that offence u/s 190 is not barred by the operation of Section-195. To hold otherwise would amount to legislating and adding very materially to the language of that Section which, it is submitted, would not be permissible while interpreting the provision. It may however, be noted that where offences are so intermingled with each other that it is impossible to separate them for trial in respect of any particular offence which does not attract the provisions of Section-195, it is not open to a Court to proceed with the trial of some offences only by dropping charges for other offences attracting that Section [Basappa Ningangowda, 1978 Cri LJ 460, 469 (kant); see also, Chandra Kishore Jha Vs. State of Bihar, 1975 Cri LJ 1939 (Pat)].

(11) After perusing the above mentioned position of law, it transpires that the addition of Section-188 of Indian Penal Code, Section-135,131 of Gujarat Police Act,1951 and under section-51(b) of Disaster Management Act-2005, in the present case by the concerned police official is nothing but an attempt to evade the resorting to provision devices of Section-195(1)(a) camouflage. Therefore, Cr.P.C. to take by a roundabout route, Section-135,131 of Gujarat Police Act,1951, prima facie seems to have been added in the case so that the police official does not have to file a private complaint. Be whatsoever it may be, in light of the above discussed observations made in the case laws cited above, even if Section-135,131 of Gujarat Police Act,1951 of Indian Penal Code was applicable in the case, it is not open to this Court to proceed with the trial of this offence (i.e. u/s-135,131 of Gujarat Police Act,1951) only by dropping charges for other offence (i.e. Section 188 of the I.P.C) attracting Section-195(1)(a) of the Cr.P.C.

(12) Considering and applying the above ratio in this case, as per the prosecution case, the accused has violated the order of public officer which falls under section-188 of IPC and sections 131 and 135 of Gujarat Police Act and unlawfully or negligently did act which was, and which he knows or has reason to believe to be, likely to spread the infection of dangerous disease to life i.e Covid-19 [sec. -269]. Thus, the alleged act was done by the accused in pursuance to that breach of the order of the public servant. Meaning there by, both the acts can not be segregated from each other, hence they are not distinct nor they can be split.

In the same way, other offence u/s 270 of the I.P.C is levelled and as per that offence, who malignantly acted which was, and which he knows or has reason to believe to be, likely to spread the infection of Covid-19 [sec. - 270] . Thus the alleged act was done by the accused in pursuance of that breach of the order of the public servant. Meaning thereby, both these acts can not be segregated from each other, hence they are not distinct nor they can be split.

(13) Further, recently on Dtd.21-09-2020, in the case of HLA SHWE vs. State Of Maharashtra Cr. Appln. No. 453-2020, the Hon'ble High Court Of Bombay Nagpur Bench (DB) has quashed the chargesheet against the accused u/s. 269,270 of I.P.C and sec. 51 of D.M. Act and sec. 3 of the Epidemic Diseases Act 1987 and sec. 14 of the Foreign Act, on relying the provision of section 195 (a) of the Criminal Procedure Code.

So in addition to these judgments and in the case of afore 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. Hence, the present Criminal Case is disposed as dismissed.

Pronounced in NATIONAL LOK ADALAT today i.e. On
this 12th day of March 2022.

Date- 12 /03 /2022
Tapi at Vyara

(B.K.Dasondi)
Chief Judicial Magistrate
Tapi at Vyara.
GJ- 00924