

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 and Section- 51 (a)(b) of the Disaster Management Act, 2005. Thereafter, investigating officer has carried out an investigation and filed charge-sheet under Section- 173 of Cr.P.C for the above mentioned offence. 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 and Section- 51(a) (b) of the Disaster Management Act, 2005.**

(2.0) 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. Further, in section - 60 of the Disaster Management Act, 2005, it is also clearly provided that no court shall take cognizance of an offence under this Act except on a complaint made by authority mentioned in this section. Thus, this court is of the view that, complaint envisaged u/s 2(d) of Cr.P.C is the mandatory requirement for taking cognizance for the offences.

(3.0) 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.

(4.0) 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.

(5.0) 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 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.

(6.0) In case on hand, as stated above, prohibition/bar for taking cognizance U/s 195 of Cr.P.C clearly applies to all the alleged offence. In-spite of that, if the court has taken the cognizance of offense punishable for Section - 188 of Indian Penal Code without complying with the mandatory requirement of Section 195 of Cr.P.C and also taken cognizance of the offense punishable for Section- 51(a) (b) of the Disaster Management Act, 2005 without complying with the mandatory requirement of Section- 60 of the the said Act and tries the accused, it amounts to abuse of process of law and will also be without jurisdiction and it is irregularity U/s 461(1) of Cr.P.C which vitiates whole trial. In light of the above discussion, 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 and Section- 51(a)(b) of the Disaster Management Act, 2005, 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