

ORDER BELOW EXH.1

(1) Heard both side advocates and perused the record of this case. In this case investigating police officer filed charge sheet against two accused under section 186 IPC on the basis of FIR lodged against the accused under the same section. On perusing the record police filed charge sheet on the ground that accused have rented his premise without getting I.D. proof from tenant and without submitting prescribed form in police station, so he committed the crime under section 186 of IPC. In section 195 Cr.P.C. It is clearly written that no court shall take cognizance of offence punishable under sections 172 to 188 of Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

(2) In **Daulat Ram v/s. State of Punjab, 1962 AIR 1206**, Hon'ble Supreme Court described the scope of Section 195 Cr.P.C. and held that as per section 195 Cr.P.C. Complaint must be in writing by the public servant concerned and if there is no compliance of this section then the trial was without jurisdiction and the conviction can not be maintained.

(3) In **Gaurishanker 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 witnesses 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 proceeding are to be dropped or complaint has to be dismissed but definitely no order of acquittal or discharge can be passed.

(4) In **(Smt.) Nirmalaben Arvindbhai Itwala & Ors. v. Kalavatiben Natwarlal Sidhwawala & Ors.**, 1997 (2) GLH 349, The Hon'ble High Court in para 3 and 4 held that :

3. As against that, if one turns to Section 195, the relevant portion is quoted hereinbelow, it can be found that the embargo put on the power of the Court to take cognizance is required to be reconciled with the said provision of the Schedule with a view to resolve the conflict which is apparent in the aforesaid statutory material.

“195(1) - No Court shall take cognizance—

(a)(i) of any offence punishable under **Sections 172 to 188 (both cognizable) of the Indian Penal Code...** except on the complaint in writing of the public servant concerned....”

4. The statutory right of authority given to the police to investigate a crime which is cognizable has to be accepted and that is the underlying principle of the Procedure Code. However, at the same time, as noted from the aforesaid **provision of sub-Section (1) of Section 195**, there is an embargo on the power of the Court to take cognizance. The offence made cognizable under the provisions of the first Schedule unless it is also held to mean that the complaint has to be initiated, the cognizance of which is taken by the police, by the complainant envisaged in sub-section (1), the police also cannot take cognizance of it and the whole exercise put in by the police pursuant to the statutory authority or power given to them will be futile.

(5) In **Arvind Kejriwal & Ors. v/s. Amit Sibal & Anr., Cri.Misc.Application no.18920-21/2013**, it was held by 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.* (2004) 7 SCC 338 would not stand in the way of trial court to do so.

(6) As per the above discussion if as per law if court has no power to take cognizance and cognizance is taken then to proceed with the matter and to

convict or acquit the accused in spite of lack of jurisdiction is bad in law. In the similar way if accused is acquitted or discharged on the basis of the ground that court has no jurisdiction to take cognizance then this will curtail the right of prosecution to file fresh proceedings as per procedure prescribed by law. In view of this to proceed with this matter is not justified by law. Hence the following order is passed.

It is hereby ordered to drop the proceedings against the two accused without going on the merits of this case, hence disposed of.

Pronounced in a special sitting of Magistrate on the 11th day of September 2021.

Date :- 11-09-2021

Ad. Chief Metropolitan Magistrate
Court No. 12, Ahmedabad.
Judge Code No. GJ 01056.