



IN THE COURT OF JUDICIAL MAGISTRATE FRIST CLASS,SECOND COURT,
SURAT.

Criminal Case No. : /2022

Order below Exh. No.- 1

1. Perused the Chargesheet and investigation papers produced in support to it and heard learned APP, specially in reference with the applicability of legal Bar on taking cognizance as provided in **Section 195(1)(a) of the CrPC**. Chargesheet is filed for the accusation of Section 188 of IPC after investigation of the the F.I.R. filed by the Police Officer in concerned Police station.

2. Questions arises,

(1) whether the court can take the cognizance of offence under sections 188 of IPC without complying with the provisions of section 195 of the Code of Criminal Procedure..?

3. To answer the above referred question it is necessary to look into relevant provisions of law. **Section 195 of the Cr.P.C.** puts legal bar on taking cognizance of any offence punishable under sections 172 to 188 (both inclusive) of the IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. **Section 2(d)** of the Cr.P.C. which defines the term complaint, any allegation made orally or in writing to a Magistrate which specifically excludes the Police report, hence complaint does not include a F.I.R. under section 154 and Police Report (generally known as charge-sheet) under Section 173 of Code of Criminal Procedure.

4. In the case of **Govardhankumar Thakordas Asrani Versus State of Gujarat & 1 in Criminal Misc. Application No. 24632 of 2015** Hon'ble High Court of Gujarat has observed that, as evident from sections 195 and 196 of the Cr.P.C. Section 195 is one of the sections, which prohibits a court from taking cognizance of certain offences unless and until a complaint has been made by some particular authority or person. In **Daulat Ram vs. State of Punjab**, 1962 AIR 1206, Hon'ble Supreme Court has held that as

per section 195 Cr.P.C. the **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 cannot be maintained.

5. As far as word '**Complaint**' in aforesaid sections is concerned it is well settled, as appears from plain reading of provision of Section 2(d) of the CrPC, that the complaint shall be directly to a Magistrate. As the section 2(d) of CrPC specifically excludes the Police report hence complaint does not include a F.I.R. under section 154 and Police Report (generally known as charge-sheet) under Section 173 of Cr.P.C.

6. Hon'ble Gujarat High Court in **Kanjibhai Bhikhabhai Vs. State in Cr.M.A. No. 348 of 1995** held that perusal of the provisions of section 195 of the CrPC, indicates that there is an express bar against taking cognizance of any offence punishable under section 188 except on a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. On a plain reading of the provisions of section 2(d) of the Code it is abundantly clear that a first information report is specifically excluded from the ambit of "complaint" as defined under the Code. I am of view that considering similar provision this ratio laid down by Hon'ble Hon'ble Court of Gujarat applies to section 51(b) of the Disaster Management Act, 2005 also.

7. Arguments are being made that these cases are filed by the police as result of action to restrict activities which are likely to spread the pandemic Covid-19 and Hon'ble Supreme Court, in **Writ Petition(Criminal) Diary No. 10953/2020, Dr. Vikram Singh Vs. Union of India & Anr,** decided on 05.05.2020, has also not entertained a Public Interest Litigation to quash FIRs registered under Section 188 of the Indian Penal Code, 1860 for violation of lockdown orders based on the legal bar of Section 195 of the Code of Criminal Procedure, hence such cases cannot be disposed of on applying the bar of Section 195 of the Code of Criminal Procedure. This arguments, with due respect, cannot be accepted because in this case Hon'ble Supreme Court has no where held that the legal bar under section 195 of the Code of Criminal Procedure cannot be applied to cases under

section 188 of the IPC which are filed during the pandemic lockdown. In fact the Hon'ble Supreme Court has not entered in applicability of provisions of section 195 of the Code of Criminal Procedure and/or section 188 of the IPC. Hon'ble Supreme Court merely with a note that it is not inclined to entertained this petition under Article 32 of the Constitution. It cannot be said that Hon'ble Supreme Court has done away with the legal bar provided under section 195 of the Code of Criminal Procedure, though they are filed in way of chargesheets and without complaint of particular authorities prescribed by the law which are filed during the pandemic, for the breach of lockdown. After this PIL dismissed by Hon'ble Supreme Court Hon'ble Bombay High Court, in case of **Hla Shwe & 7 Others vs State Of Mah. in Criminal Application (APL) No. 453/2020**, decided on 21/09/2020, has quashed the F.I.R. and charge-sheet for the offences punishable under sections Sections 188, 269, 270 of the IPC, Section 14 of the Foreigners Act, Section 3 of the Epidemic Disease Act, 1987 and Section 51 of the Disaster Management Act, 2005. In this case Hon'ble Bombay High Court has quashed the proceedings with observation that allowing the prosecution to continue would be nothing but an abuse of the process of the Court in as much as there was an express legal bar against the institution of F.I.R. against an accused based on the police report.

8. If this court take the cognizance of offence punishable for section 188 of IPC without complying with the mandatory requirement of section 195 of Cr.P.C. and tries the accused, it can not only be the abuse of the process of the court buy will also be without jurisdiction and it is an irregularity under Section 461(1) of CrPC which vitiates the proceedings.

9. In present case it is not in dispute that the case is based on a charge-sheet filed after the investigation of a F.I.R. and it is also not in dispute that there is no complaint before this Court as prescribed in Section 2(d) of CrPC by the authority mentioned in section 195 of CrPC or Section 60 of the Disaster Management Act. Hence, it can be said that prohibition for taking cognizance clearly applies to all the alleged offences in this case.

10. This Court is of view that if this Court take cognizance of this case and try it on merits like any other Criminal case to which bar under section 195 of the Code of Criminal Procedure does not apply, the same will be a breach of instructions issued on administrative side by Hon'ble High Court of Gujarat in the **Circular No.D.2912-13/2017 dated 29.07.2017** instructing all Judicial Officers that if these cases are treated as regular criminal cases and disposed of by giving judgments and points are earned it is in clear violation of the judicial pronouncements of the Hon'ble Apex Court and Hon'ble Gujarat High Court and not following these instructions scrupulously and any breach of same will be treated as misconduct on the part of Judicial Officer concerned.

11. In light of the 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.

Upon aforesaid discussion proceedings of this case requires to be dropped and hence I pass the following final order:

FINAL ORDER

(A) The proceeding for offences punishable under **Section 188** of IPC against the accused is hereby dropped as provided in section 258 of CrPC. Appropriate authority is at liberty to file complaint before court as per the provisions of laws concerned.

(B) Bail bonds to be continued for six months from the date of this order and will be binding on the accused and the surety if any proceeding is initiated on challenge of this order.

Pronounced in open Court today i.e.11th day of Month of February Year 2023.

Date : 11/02 /2023
Place: SURAT

(JAYSHRIBEN SHANTILAL JADAV)
JUDGE CODE NO.01424
JUDICIAL MAGISTRATE FIRST CLASS,SECOND COURT,SURAT.