

:: ORDER BELOW EXHIBIT 1 ::

1. Perused the chargesheet, FIR and the police papers.
2. It is very important to ascertain whether this Court can take the cognizance of offences when charge sheet is filed by the Investigating Officer under sections 172 to 188 of the Indian Penal Code with other offences without complying with the provisions of section 195 of the criminal procedure.
3. The Hon'ble Calcutta High Court in the case of **Mt. Lachmi Devi v. Emperor¹**, through the Hon'ble Chief Justice Shri Rankin, has held that section 195 of the Criminal Procedure Code prescribes 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. It would not be possible to prosecute a person on the basis of 'police report' even when the offence has been made cognizable without complying with the provisions enumerated in section 195(1)(a).
4. In **Daulat Ram v. State Of Punjab²**, the Hon'ble Supreme Court described the scope of section 195 of the Code of Criminal Procedure and held that as per section 195 of the Code of Criminal Procedure, 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. Whereas the **Hon'ble Gujarat High Court in the case of Kanjibhai v. State³**, has held that as per section 195 of the Code of Criminal Procedure complaint by the concerned public servant is the Sine Qua Non for initiating the proceedings of offence under sections 172 to 188 of IPC against the accused and if there is no complaint of concerned public servant cognizance taken by court is bad in law. Only commissioner whose proclamation order is violated or the officer to whom he is administratively subordinate can file the written complaint and in absence of this procedure the courts have no power to take cognizance on chargesheet.
5. In **Goverdhankumar Thakordas Asrani v. State of Gujarat⁴**, the **Hon'ble High Court of Gujarat** in para 39 has held as under:

"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 section 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."
6. In this case on hand the Investigating Officer has submitted charge-sheet under section 188 of IPC on the basis of FIR under the same sections. As per facts of this case and allegations alleged against accused, the accused was found at an open place and breached the conditions of proclamation order, regarding COVID-19 pandemic, issued by Collector Shree. On perusal of FIR and charge sheet submitted, it is clear that the offence under section 188 of the IPC is closely barred.

1. **AIR 1931 Cal 122.**

2. **AIR 1962 SC 1206.**

3. **Criminal Misc. Application No.348 of 1995.**

4. **2018(1) G.L.H. 63.**

7. The Hon'ble Supreme Court of India in **Bhagwat Singh v. Commissioner of Police and another**⁵, has held that if charge sheet is submitted in Court and Magistrate is not agreed with the report then he has to drop the proceedings against the accused. In this present case, if this Court has to take cognizance of the offences punishable from section 172 to 188 of IPC with other distinct offences which all are closely inter connected and proceed with the matter to convict or acquit the accused inspite of lack of jurisdiction then it is bad in law. In the similar way if the accused is acquitted or discharged on the basis 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.
8. This case has been initiated in COVID epidemic. Hence, in this situation the ratio laid down by Hon'ble Bombay High Court (Division Bench) is relevant. In the case of **HLA SHWE & others v. State of Maharashtra Police Tehsil Nagpur**⁶, it was held that :
- "24. Having considered the ambit and scope of Section 195(1) of the Code and the ratio laid down by the Supreme Court referred to hereinabove, we are of the opinion that the investigating authorities acted without jurisdiction in registering the F.I.R. under Section 188 of the Indian Penal Code based on a complaint of police. The investigation conducted by the police was also without jurisdiction.*
- xxx xxx xxx*
- 26. In the backdrop of the exposition of the aforesaid position, we are of the considered view that the implication of the applicants herein for the offences punishable under Sections **188, 269, 270 of the Indian Penal Code** and Section 14 of the Foreigners Act, Section 3 of the Epidemic Disease Act, 1987 and Section 51 of the Disaster Management Act, 2005 **would be an abuse of process of law.** Compelling the applicants to undergo the **trial would cause grave injustice.** We, therefore, deem it appropriate to quash the F.I.R. bearing No. 178/2020 and charge-sheet bearing registration No. 6076/2020 before the Judicial Magistrate, First Class, Nagpur."*
9. Thus, in view of aforesaid decision of the Hon'ble Division Bench, the doctrine of sameness applies and this offence cannot be split by other sections. Hence, this court cannot take cognizance. Moreover, this case is summons triable. Hence, provisions of summons triable case be applicable. Upon the discussion of following provisions of law and judgments propounded by the Hon'ble Apex Court and various other Hon'ble High Courts, this Court passes the following final order :

:: **ORDER** ::

The proceeding against the accused is hereby dropped without taking cognizance and to give effect as to acquit or discharge the accused with liberty to the prosecution to file complaint before the Court as per the provisions of law.

Pronounced in the open Court today on this 26th Day of June, 2022 at Surat.

- Sd/ -

PLACE : SURAT

DATE : 26.06.2022

AAKAR L. TRIVEDI

6th JUDICIAL MAGISTRATE, FIRST CLASS, SURAT
(CODE NO.GJ01557)

5. **1985 AIR 1285.**

6. **Criminal Application No.453 of 2020, dated 21.09.2020.**