

Order below Exhibit-1

1. Perusing the charge-sheet it appears that the offences leveled against the accused in the charge-sheet are punishable under section-269 of Indian Penal code and section-3 of the Epidemic Diseases Act, 1897 and Section 135 of Gujarat Police Act.
2. The provision of section-195 of the Code of Criminal Procedure provides as under;

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to

have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or,

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

3. The provision of Section-3 of the Epidemic Diseases Act, 1897 is hereby reproduced as under;

3. Penalty.—*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).*

4. So in view of section-195(1)(a) no court shall take cognizance of an offence punishable under section-188 or attempt to commit or abet to commit or conspiracy to commit such offence except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Furthermore the offence punishable under section-3 of the Epidemic Diseases Act, 1897, shall be deemed to be an offence punishable under section-188 of Indian Penal Code, so for the said offence, the bar under section-195 of CrPC would apply and the court cannot take cognizance of such offence punishable under section-3 of the said Act of 1897 on the basis of police report.

5. In this case, no such complaint in writing has been filed either by public servant concerned or by competent person against the accused for having committed an offence under section-188 of IPC. In stead of filing complaint, the police authorities has registered FIR with respect to such offences and investigated such offences and submitted charge-sheet in this court as per section-173(2) of CrPC with respect to offence punishable under section-188 of Indian Penal code. So it transpires to this court that this court cannot take cognizance of offence punishable under section-188 of Indian Penal Code and offence punishable under Section-3 of the Epidemic Diseases Act, 1897 on the basis of police report.
6. So far as to application of Section-269 of concerned, it appears that there are following ingredients of such offence;
 - (1) The disease in question was infectious and dangerous to life.
 - (2) The accused did an act which was likely to spread infection of the disease.
 - (3) The accused did the act unlawfully or negligently.
 - (4) He knew or had reason to believe that his act was likely to spread infection of the disease.
7. Perusing the complaint it appears that the alleged offence in so interconnected with the offence punishable under section-188 of Indian Penal Code which

cannot be split up from the each other and no cognizance can be taken for the other offence. It is in sum and substance the offence of violating the notification of the competent authority which is required to be taken into consideration of each and every case. In this connection it would be useful to refer one of the pronouncement of Hon'ble High Court of Gujarat namely "Govardhan Kumar Thakoredas Asrani Vs. State of Gujarat" reported in 2018 (1) GLH 63 wherein it has been held in para-39 and 41 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 sections 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.

41. Thus, what is discernible from the decisions referred to above of the Supreme Court is that if in truth and substance, an offence falls in the category of sections in section 195, it is not open to the court to

undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences. This would depend on the facts of each case. It cannot be laid as a straitjacket formula that the Court cannot undertake the exercise of splitting up. It would depend upon the nature of the allegations and the materials on record.

8. So in view of the aforesaid discussion, the accused is required to be discharged with respect to such offences since in this case the offence punishable under section-269 of IPC and Section 135 of G.P. Act is in sum and substance, falls in the category of section-195 of Cr.P.C. So, I hereby pass following order in the interest of justice.

ORDER

1. The accused is hereby ordered to be discharged in connection with offence punishable under section-269 of Indian Penal Code and offence punishable under section-3 of the Epidemic Diseases Act, 1897 and offence punishable under Section 135 of G.P. Act in view of bar of section-195 of Code of Criminal Procedure, 1973.
2. The case is hereby disposed of for want of prosecution.

Date : 11-09-2021
Place : Surat.

(Amitkumar Narendrabhai Dave)
Chief Judicial Magistrate, Surat
Code : GJ 00807