

Order Below Exhibit- 1

1. Hear Ld. A.P.P.

This Court has taken a judicial notice of the fact that in the wake of COVID19, many chargesheets, as per Section 173(2) of The Code of Criminal Procedure (CrPC), have been filed in this Court, in some combinations of the following penal provisions:

i. Section 188 of the Indian Penal Code (IPC).

ii. Section 51, 51A, 51B.. of The Disaster Management Act, 2005 (DMA).

2. It is to be mentioned that for the offence punishable under Section 188 of IPC, no court shall take cognizance unless a complaint in writing has been made as envisaged under Section 195 (I) (a) of CrPC. Also, for the disobedience of any order or Regulation under the EDA, it shall be deemed to be an offence punishable under Section of 188 of IPC, by virtue of Section 3 of EDA, hence, no court shall take cognizance, unless a complaint in writing has been made as envisaged under Section 195(1) (a) of CrPC. Likewise, for the offence committed under Section 51 of DMA, no court shall take cognizance unless a complaint in writing has been made as envisaged under Section 60 of DMA.

3. For the observation made by the Hon'ble High Court of Gujarat, in the case of Govardhan Kumar Thakordas Asrani Vs. State of Gujarat; 2018 (1) GLH 63, would be handy. It was observed in the Para 41 of the said judgment 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 proceedings further against the accused for the other distinct Offences." This Court, while relying upon the above observation, is of the view that the said offences cannot be split from offence under Section of 188 IPC or Section 51 of DMA, because the peculiar facts of the cases pending under Section 269 and /or 271 of IPC, primarily & essentially discloses an offence which, in truth and substance, arises either, out of Section 188 of IPC or Section 51 of DMA only.

4. It is clear from the above discussion that no court has taken cognizance of an offence committed under Section 188 of IPC or Section 51 of DMA, for which no complaint has been made, as envisaged under Section 195 of CrPC Qua Section 188 of IPC & Section 3 of EDA or as envisaged under Section 60 of DMA qua Section 51 of DMA.

5. The instant charge sheet includes some combination of penal provisions mentioned in the Para 1 of this Order and hence won't survive for want of complaint. Therefore, the Accused are ordered to be discharged, as per Section 258 of Crpc, qua the Penal provisions alleged in the chargesheet.

Announced today open court on Dt.11/12/2021 in Special sitting.

Date: 11 /12/2021
Place: Ahmedabad

(B. H. Ghasura)
Additional Chief Metropolitan Magistrate,
Court No. 11, Ahmedabad.
Judge Code No. 00983