



CRIMINAL CASE NO. 444/2022
ORDER BELOW EXH.1

1. Perused the report as submitted by the Investigating Officer after completion of investigation.
2. On perusal of the record, it transpires that , theFirst Information Report is lodges against accused under Section 154 of the Code of Criminal Procedure for the offence punishable under Section 188,etc and other releted Act, the Investigating Officer had started investigation against the accused on the accused has violated the term of promulgation as issued by the **District Collector and District Magistrate,Himmatnagar, Dist. Sabarkantha** and it appears that after completion of the investigation, the Investigating Officer filed the charge sheet against the accused for the above offences . Therefore, prior to issue the summons against the accused and the stage of taking the cognizance, it is required to be taken into consideration that if any such offences in which one of the offence is under of Section 188 of the Indian Penal Code, in such case whether this Court is empowered to take cognizance or not, and for that while considering the provisions as envisaged under Section 195 (1) of the Code of Criminal Procedure which is as under:

"(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;"

Therefore, while considering the provisions as envisaged under Section 195 (1) of the Code of Criminal Procedure, it is clearly envisaged that no Court shall take cognizance of the offence punishable under Section 172 to 188 (inclusive of both) of Indian Penal Code, 1860 save and except on the written complaint of the public servant or of some other public servant to whom he is administratively subordinate. Further, while on plain reading of the provisions as envisaged under Section 195 of the Code of Criminal Procedure, the term "complaint" is to be considered as defined under Section 2 (d) of the Code of Criminal Procedure, which is as:

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. A report made by a police officer in a case which discloses, after investigation, the commission of a noncognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

3. Therefore, while considering the definition as defined regarding the term "complaint" under Section 2 (d) of the Code of Criminal Procedure, it is crystal clear that the report of the police does not fall under the ambit of term "complaint" as defined under Section 2 (d) of the Code of Criminal Procedure. Therefore, considering the above facts, it is crystal clear that on the basis of the police report as submitted by the Investigating Officer after completion of investigation, it means the charge sheet in the same one of the offence is of under section 188 of the Indian Penal Code and as discussed as per the provisions as envisaged under Section 195 of the Code of Criminal Procedure there is clear bar to take cognizance and as discussed as per the above provision, no Court is having jurisdiction to take cognizance if any of offence punishable under Section 172 to 188 (both inclusive) of Indian Penal Code. Further, as discussed it also clearly and

ostensibly transpires that save and except the offence punishable under Section 188 of the Indian Penal Code, offence punishable under Section 51B Disaster Management Act is also against the accused, it means that the Investigating Officer has filed the chargesheet against the accused for the other offence also, which is not falling within the provisions of Section 195 of the Code of Criminal Procedure, yet that offence, being the same or at least interwoven, now the question arises whether this Court could have jurisdiction to take cognizance for the rest of the offence, it means the offence as punishable under Section 51B Disaster Management Act or whether this Court is having the jurisdiction to take the cognizance for the above offence without complying with the provisions as envisaged under Section 195 of the Code of Criminal Procedure by splitting up to avoid the provisions as envisaged under Section 195 of the Code of Criminal Procedure and for that this Court at the time of adjudicating the present criminal case against the accused the provisions as envisaged under Section 195 of the Code of Criminal Procedure are limited only to the prosecution of the certain offences, it means that for the offences punishable under Section 172 to 188 (both inclusive) of the Indian Penal Code and not for the other offences. Further, it also transpires that the prosecution in respect of other distinct offences based on the same facts could not be instituted except otherwise in compliance with the provisions of Section 195 of the Code of Criminal Procedure. Therefore, while considering the Case on hand in nutshell it transpires that it is always open and lawful for the Court concerned to take cognizance of other distinct offences on police report excluding offence falling within the ambit of Section 195 of the Code of Criminal Procedure.

4. On bestowed my thoughtful consideration it is undisputed fact on the record that save and except the offence punishable under Section 188 of the Indian Penal Code, there were other offences against the accused for the offence punishable under Section 51B Disaster Management Act and in this regard, while considering the ratio as laid down by the Hon'ble High Court in the case of Govardhankumar Thakoredas Asrani v/s. State of Gujarat in Special Criminal Application No.2544/2015 and others, while passing the CAV judgment on dated 13.04.2017 in para 38, 39, 41, 43, 46 the Hon'ble High Court has laid down the ratio that:

"38. As a general rule, any person, having knowledge of commission of an offence may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. There are exceptions to this general rule, 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. The other sections, with similar prescriptions, are sections 196 to 199 of the Code. Section 195 of the Code has been enacted as a safeguard against the irresponsible and reckless prosecutions by the private individuals in respect of the offences, which relate to the administration of justice and contempt of lawful authority.

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 chargesheet 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.

43. Thus, according to the decision of the Supreme Court referred to above, the provision in section 195 of the code should not be evaded by resorting to devises and camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. If in truth and substance, the offence falls in the category of the sections mentioned in section 195 of the Code, the prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong lable on it or changing its garb. If the facts disclose an offence requiring special complaint under section 195 of the Code, the provision cannot be circumvented by filing a complaint, for which, no special complaint is required under the law, the nature of the offence being

the same.

5. Therefore, while considering the ratio as laid down by the Hon'ble High Court in the above judgment, the same is squarely applicable in the instant case on hand also and it also transpires that the Hon'ble High Court in the above judgment considered the numerous judgments of the Hon'ble Apex Court on the issue of Section 195 of the Code of Criminal Procedure and considering the ratio as laid down the distinct offences which are not covered under Section 195 of the Code of Criminal Procedure or which are not included within the ambit of Section 195 of the Code of Criminal Procedure, but if there is a single transaction in which save and except the offence punishable under Section 188 of the Indian Penal Code are added, in that circumstances if it is closely interconnected with other distinct offences, then the same could not be split up and in such circumstances, the bar of Section 195 of the Code of Criminal Procedure will also be applied to such other distinct offences also.

6. Further, in the case of Kanjibhai v/s. State of Gujarat in Criminal Misc. Application No. 348/1995 decided on 16.03.2010, the Hon'ble High Court has laid down the ratio in para 7 that in view of the provisions of subsection (1) of section 195, which expressly bars taking of cognizance of an offence under section 188 except as provided thereunder, read with section 2 (d) of the Code, it was not permissible for the learned Judicial Magistrate First Class, Visnagar to take cognizance of the offence in question on the basis of a chargesheet filed pursuant to the first information report lodged by the respondent No. 2. In the light of the provisions of section 195 (1) (a), the Court could not have taken cognizance of the offence under section 188 of Indian Penal Code except in the complaint in writing by the public servant concerned or some other public servant to whom he is administratively subordinate.

7. Therefore, while considering the ratio as laid down by the Hon'ble Supreme Court as well as the Hon'ble High Court in the above judgment, it is crystal clear on the record that the present prosecution was not initiated against the accused by filing the complaint as envisaged under section 2 (d) of the Code of Criminal Procedure either in written or orally before this Court, but as discussed it is crystal clear that the present prosecution is initiated against the accused on the basis of the police report and as discussed all the offences as alleged against the accused or alleged over and above one covered under Section 195 of the Code of Criminal Procedure and it is also alleged that all the offences have been committed in the course of the same transaction. Therefore, as discussed, the distinct offences cannot be split up to avoid the provisions as envisaged under Section 195 of the Code of Criminal Procedure. Therefore, in the present criminal case there is a specific bar to take the cognizance by this Court under Section 195 of the Code of Criminal Procedure and if there is a bar to take the cognizance, then in such circumstances this Court is having no jurisdiction to start the prosecution against the accused. Hence, in larger interest of justice I pass the following order:

O R D E R

Proceeding of this case is hereby ordered to be stop.
No order as to the cost.

Signed and Pronounced in Special sitting on 12th Day of March- 2022.

Date : 12.03.2022
Place: Khedbrahma

(Hardik Arvindkumar Upadhyay)
Addl. Chief Judi. Magi., Khedbrahma.
Judge Code No. GJ00635