

In the Court of 16 th Additional Chief Judicial Magistrate ,Rajkot
Criminal Case No.9618/2021

Order Below Exh.1

(1) Read the chargesheet & police papers. In this case the investigation officer has filed the chargesheet under section 188 of IPC upon the basis of FIR and whether the court can take the cognizance of offences under sections 172 to 188 of IPC without complying with the provisions of section 195 of the criminal procedure is answered by the Privy Council in the case of **Aft. Lachmi Devi V. Emperor** through Rankin C.J. 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). Hon'ble Gujarat high Court in **KanjiBhai Vs State** in Cr.M.A No. 348 of 1995 held that as per section 195 Cr.P.C. 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. Subordinate used in the section 195 connote the meaning that complainant may be the person who has promulgated the order or any person who is administratively senior to him thus the subordinate here is used in the context of administratively superior officer.

(2) If the courts have taken the cognizance of offence punishable from section 172-188 of IPC without complying with the mandatory requirement of section 195 of Cr.P.C. then courts are supposed to be guided by the ratio laid down in **Gauri shankar Jha Vs. State Of Bihar** in which it is specifically held that when it comes to the knowledge that the court has no jurisdiction to proceed with the matter then no order as to acquittal or discharge be passed and it is better to drop the proceedings and dismiss the case. Further more If the court has taken the cognizance of the offences punishable from section 172 to 188 of IPC and proceeded 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.

(3) Upon the above discussion of following provisions of law & judgments propounded by the Apex court & various Hon'ble High Courts, court passes the following final order at this stage.

FINAL ORDER

- The Proceeding against the accused person u/s Sec.188 of Indian Penal Code is hereby dropped without the effect as to acquit or discharge the accused.
- It was Also order to prosecution to take such steps as he deems fit in accordance with law to file complaint.
- If any muddamal recovered shall be disposed as per rules and regulation .

Rajkot
Date:-11/12/2021

(Saurabh Bipinchandra Shah)
16 th Add. Sr. Civil Judge & A.C.J.M.
Rajkot
Code No.GJ00946.