

Criminal Case No.867 of 2021

ORDER BELOW EXHIBIT- 01

1) As the police has filed a charge-sheet having offence under section 188 of The Indian Penal Code against the present accused. It is necessary to look it from various aspects.

2) **Legal Provisions.**

- **Section 188 of The Indian Penal Code deals with Disobedience to order duly promulgated by public servant.**—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces or is likely to produce harm.

- **Section 195 of The Criminal Procedure Code deals with 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;

3) Intention of Legislature.

- The Hon'ble Apex Court in **C.Muniappan and Others .Vs. State of Tamil Nadu reported in (2010) 9 SCC 567** in para 20 has categorically held that Section 195 (a) (i) of Cr.P.C bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. **The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant.** The court lacks competence to take cognizance in certain types of offences enumerated therein. **legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions.**

4) Scope, Cognizance & Jurisdiction.

- **The Hon'ble High Court of Gujarat in Goverdhankumar Thakoredas Asrani Vs. State of Gujarat (2018) 1 GLH 63** has taken the view observed by Hon'ble Supreme Court in **Daulat Ram v/s. State of Punjab, 1962 AIR 1206**, that as per Section 195 of the Code of Criminal Procedure, 1973, the Complaint must be in writing by the Public Servant concerned and if, there is no compliance of this provision then the trial would be without jurisdiction and the conviction cannot be maintained.

The Hon'ble Court has further observed that- Thus, in view of the above, the law can be summarised to the effect that there must be a

complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. **The provisions of Section 195 Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all-other consequential orders. The Court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.**

- **In Kanjibhai Babldas Patel & ors v/s. State on 16th March, 2010, Criminal Misc. Application No.348 of 1995, The Hon'ble High Court of Gujarat in Para-7 has observed that,** in view of the provisions of Sub-Section (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 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 light of the provision of Section 195(1)(a), the Court could not have taken cognizance of the offence under Section 188 of the Indian Penal Code, 1860 except on a Complaint in writing by the Public Servant concerned or some other Public Servant to whom he is administratively subordinate.
- **In M.S. Ahlawat vs. State of Haryana & Anr., AIR 2000 SC 168,** the Hon'ble Court has observed that Provisions of Section 195 Cr.P.C., 1973 are mandatory and no court has jurisdiction to take cognisance of any of the offences mentioned therein unless there is a complaint in writing as required under that section.

5) Facts of the Present Case.

The accused violated the term of promulgation issued by the District Magistrate & Collector, Dahod and by that, he committed the crime which attracted the registration of FIR for offence under Section 188 of the Indian Penal Code and finally resulted into the charge-sheet on hand. There is cognizable absence of the complaint in writing of the public servant concerned or of some other public

servant to whom he is administratively subordinate as per requirement of Section 195 of The Cr.P.C.

6) Conclusion.

In view of the Section 188 of I.P.C., Section 195 of the Cr.P.C., Observations made by the Hon'ble Apex Court & Hon'ble High Courts in various cases and the fact & record of the case on hand, it is clear like broad day-light that, this court has no jurisdiction to take the cognizance of case on hand and to proceed therewith and therefor, this case stands disposed of accordingly. The interim order passed regarding Muddamal is hereby ordered to be continued unconditionally.

Pronounced on this 10th day of July, 2021 in Special Sitting.

Date : 10/07/2021

Dahod.

(S.K.Solanki)

Addl. Civil Judge & Judicial
Magistrate First Class, Dahod.

GJ – 01299.