

Order Below Exhibit : 1

1. This Court has taken a judicial notice of the fact that in the wake of COVID-19, 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 Indian Penal Code (IPC)
 - (ii) Section 3 of The Epidemic Diseases Act, 1897 (EDA)
 - (iii) Section 51 of The Disaster Management Act, 2005 (DMA)
 - (iv) Section 269 and/or 270 and/or 271 of Indian Penal Code
 - (v) Section 13(i) of Gujarat Epidemic Regulator, 2020
2. This Court has Perused the section 190 & 195 of Code of Criminal Procedure, 1973 (herein after referred as "Cr.P.C") in which it is stated that the Magistrate can take the cognizance subject to the provision of this Chapter i.e. Chapter XIV hence, in Section 195 of CrPC, it is clearly provided that no court shall take cognizance of offence punishable under Section 172 to 188 (inclusive of both sections) of the Indian Penal Code, 1860 except on the complaint in written of the public Servant concerned or of some other public servant to whom he is administratively subordinate. The complaint referred to above in Section 195(1)(a) means complaint as defined under section 2(d) of the Cr.P.C. It means a complaint in writing before this court.
3. In such circumstances referred to above, the court could not have taken cognizance of the offence under Section 188 of the Indian Penal Code on a police report.
4. Moreover, Section 269 of the Indian Penal Code is distinct offence and not covered under section 195 of the Cr.P.C, yet, if all the offence are alleged to have been committed in the course of one transaction and such offences formed an integral part, then bar of Section 195 would be attracted even so far as the two offences are concerned. The law in this regard is well settled. In the case of **State of U.P Vs. Suresh Chandra Srivastava and others, reported in AIR 1984 SC 1108**, the Supreme Court has held as under:-

"It is well settled that where an accused commits some offence which are separate and distinct from those contained in Section 195, Section 195 will affect, only the offence mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 Cr.P.C"

This court may also quote the decision of the Hon'ble High Court of Gujarat In the case of **Goverdhan Kumar Thakoredas Asrani Vs. State of Gujarat; reported in 2018(1) GLH 63**, The Gujarat High Court has 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 proceeding further against the accused for the

other distinct offences.”

5. It is clear from the above discussion that no court shall take cognizance of an offence committed under Section 188 of IPC or Section 3 of EDA 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. Moreover, the cognizance under 269 and/or, 270 and/or 271 of IPC would also be barred, as discussed in the preceding paragraph.
6. The same principle would apply in the present case. It is not permissible for this Court to split up the said offences, i.e Section 3 of The Epidemic Diseases Act-1897 and 188 & 269 of the Indian Penal Code because all the said offences could be said to have been committed in the course of one transaction, Therefore, the present criminal Case won't survive for want of the complaint in written of the public servant concerned or of some other public servant to whom he is administratively subordinate. hence, following order passed;-

:- ORDER :-

1. Present Criminal Case is disposed of as dismissed.
2. The Muddamal, if any, seized by the authorities in this case, is hereby ordered to be disposed of as per the provisions of Criminal Manual.
3. The accused of this matter is hereby discharged from alleged offences. Pronounced & Signed in open Court.

Dated. 12-03-2022

(MONICABA H. VAGHELA)
Surat. 6TH Add.Civil Judge &
JMFC,Surat.
(GJ01339)