

ORDER BELOW EXHIBIT NUMBER 1

For the purpose of taking cognizance of the offence by this court, Police had filed a chargesheet as per section 173(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code") after investigating the matter. Police had filed this chargesheet against the accused for the offences of "Obstructing public servant in discharge of public functions" and consequently, accused them of the offences prescribed under Section 186 & 114 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC").

Question which comes before this court is whether this court can take cognizance of the matter in which chargesheet has been filed under Section 186 of the IPC without a written complaint from the concerned public servant; answer to which cannot be given unless the provisions relating to cognizance and the restrictions upon them are discussed in detail.

Power of taking cognizance has certain limitations and restrictions too, i.e., this power of taking cognizance is not absolute. Provisions contained in Sections 195 to 197 of the Code as well as the provisions of limitation provided under Chapter XXXVI of the Code, contain certain restrictions on this power of taking cognizance.

Courts have been vested with the power to take cognizance of the offence under Section 190 of the Code, verbatim language of which is reproduced herewith:

"Section 190- Cognizance of offences by Magistrates

(1) **Subject to the provisions of this Chapter**, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under subsection (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under subsection (1) of such offences as are within his competence to inquire into or try."



Language of Section 190 of the Code itself speaks that this power of taking cognizance is subject to certain restrictions. Section 190 of the Code starts with the expression "**Subject to the provisions of this Chapter**", which means this power is not absolute and the magistrate cannot take cognizance of certain offences if they have not been instituted as per the letter of law. General rule with respect to putting the law into motion is that anyone with the knowledge of commission of crime/offence may seek cognizance by the Magistrate through a complaint even though he is not personally interested in or affected by the offence/crime. Sections 195 to 199 of the Code (Chapter XIV of the Code) provide exceptions to this general rule because they forbid cognizance of the offences referred to therein except where a complaint is lodged by the Court or the concerned public servant. The provisions of these Sections are mandatory and Court has no authority to take cognizance of any of the offences listed therein unless there is a written complaint as prescribed by the letter of law.

Sub-clause (1) (a) of Section 195 of the Code is relevant here, hence verbatim reproduction of the same is necessary:

"Section 195: 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) xxx xxx xxx

(iii) xxx xxx xxx

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate."

According to Section 195(1) (a), Court shall not take cognizance of those cases which are punishable under Section 172 to Section 188 of the IPC **unless a public servant makes a written complaint.**¹

Factual matrix of the case is such that the accused have obstructed the public servant while he was discharging the public functions, and thereby police had filed the chargesheet against the accused for the offence under Section 186 and 114 of the IPC.

¹ Section 188 has been omitted from the number of Sections 172 to 188 of the IPC.

Before answering the question as to cognizance of offence under Section 186 of the IPC, this court considers it necessary to discuss some relevant judgments of Honorable Supreme Court. As far as the question of mandate of Section 195 is concerned, Honorable Supreme Court in the judgment of "*C. Muniappan v. State of T.N.*"², has observed as under

"33. 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 CrPC 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."

Honorable Supreme Court has reiterated the same principle in the case of *Babita Lila v. Union of India*³, in which Honorable Supreme Court has observed as under;

"46. That the provisions of Section 195 of the Code are mandatory so much so that non-compliance thereof would vitiate the prosecution and all consequential orders, has been ruled by this Court, amongst others in *C. Muniappan v. State of T.N.* (supra) wherein the following observations *in Sachida Nand Singh v. State of Bihar*⁴ were recorded with approval: (SCC pp. 497-98, para 7)

"7 Section 190 of the Code empowers "any Magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such general powers of the Magistrate, and the general right of a person to move the court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise.



² (2010) 9 SCC 567

³ (2016) 9 SCC 647

⁴ (1998) 2 SCC 493

Law laid down by their Lordships of the Hon'ble Supreme Court has made it lucid that the cognizance of the offence under Section 186 of the IPC cannot be taken by the jurisdictional Magistrate under Section 190 of the Code unless a complaint as defined in Section 2(d) of the Code, in writing is filed by the concerned public officer.

Looking into the facts of the case at hand, the judgments of Hon'ble Supreme Court and the bar prescribed by Section 195 of the CrPC, it is clear that this court cannot take cognizance of the offence mentioned in the chargesheet. Therefore, this court passes the following order.

ORDER

This court refuses to take cognizance of the offences made out in the chargesheet, in absence of fulfilment of the mandate of law. It shall be open to the state to file fresh proceedings against the accused within the prescribed period as per law.

This order is pronounced on this 09th day of December, 2023.



Place: Surat

Karn Ajit Marwaha

Date: 09/12/2023

5th Additional Civil Judge & JMFC, Surat

GJ01558