

Order below Exhibit– 1

Case No: CC/5424/2021

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

2. It is to mention that for the offence punishable under Section 188 of IPC, no court shall take cognizance unless a complaint in writing has been made as envisaged under Section 195(1)(a) of CrPC. Also, for the disobedience of any Order or Regulation under the EDA, it shall be deemed to be an offence punishable under Section of 188 of IPC, by virtue of Section 3 of EDA, hence, no court shall take cognizance unless a complaint in writing has been made as envisaged under Section 195(1)(a) of CrPC. Likewise, for the offence committed under Section 51 of DMA, no court shall take cognizance unless a complaint in writing has been made as envisaged under Section 60 of DMA.

3. For the offence under Section 269 and/or 270 and/or 271 of IPC, the observations made by the Hon'ble High Court of Gujarat, in the case of Govardhan Kumar Thakoredas Asrani Vs. State of Gujarat; 2018(1) GLH 63, would be handy. It was 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."

This Court, while relying upon the above observation, is of the view that the said offences cannot be split from offence under Section of 188 IPC or Section 3 of EDA or Section 51 of DMA because the peculiar facts of the cases pending under Section 269 and/or 270 and/or 271 of IPC, primarily & essentially discloses an offence which, in truth and substance, arises either out of Section 188 of IPC or Section 3 of EDA or Section 51 of DMA only.

4. 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.

5. The instant chargesheet also includes some combination of penal provisions mentioned in the Para 1 of this order and hence won't survive for want of complaint. Therefore, the accused is/are ordered to be discharged, as per Section 258 of CrPC, *qua* the penal provision(s) alleged in the chargesheet.

Dt. 09/04/2021

(Himanshu Choudhary)
JMFC (2nd Court), Surat; GJ01180