

Order below exhibit -1

1. The investigating officer has filed the present charge sheet under section 269,188, of Indian Penal Code and section. 51 (b) of Disaster management act and sections 3 in the Epidemic Act 1997.
2. According to Section 195(1)(a)(i) of The Criminal Procedure Code, no court shall take cognizance of an offence under sections. 172 to188 of the 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.
3. In the present case the charge sheet is filed under section 188 of the Indian Penal Code along with other offences but written complaint is not filed by the public servant concerned or of some other public servant to whom he is administrative subordinate. In view of section 195(1)(a)(i) of The Criminal Procedure Code the court cannot take cognizance of an offence under section 186 and 188 of the Indian Penal Code.
4. In this connection it would be useful to refer the pronouncement of the judgment of Hon'ble High Court Of Gujarat, R.Cr.ma/11785/2020, wherein it has been held that ***"it is not open to the court to take cognizance without complying the provision of that section. Since all the other offences, over and above the one under section 195 of the Cr.p.c. are alleged to have been committed in the course of the same transaction, they cannot be split up to avoid the provision of section 195 of the Cr.pc."*** Furthermore, in R.Cr.ma/20708/2014, it has been held by Hon'ble High Court that, ***"if I hold that the offence under section 188 of the I.P.C. is made out then, probably, the whole prosecution case would fail because the court could not have taken cognizance of an offence punishable under section 188 of I.P.C. on a police report in view of specific bar of section 195 of the Cr.p.c. so far as the other offences are concerned i.e. section 323, 506 (2) and 504 of the I.P.C. if they are alleged to have been committed in the course of one transaction, then although those offences may not be found in under section 195 of the Cr.p.c., but then bar of section 195 would still apply."*** In the present case also all the offences, charged against the accused appear to have been committed in the course of one transaction.
5. In view of the above, since the court cannot take cognizance for the offences under section 269, 188 of Indian Penal Code and section. 51 (b) of Disaster management act and sections 3 in the Epidemic Act 1997. The charge sheet filed by the investigating officer is hereby not accepted and the case is disposed of accordingly. Muddamal article if any seized shall be returned to the person from whom it is seized after the appeal period.

Pronounced today in special sitting of Court on 12th November, 2022

Date-12 November 2022
Kodinar

(Hemorsinh Manubhai Parmar)
JMFC. Code no.GJ01276