

Order below Exhibit-1

1. Perusing the charge-sheet it appears that the offences leveled against the accused in the charge-sheet are punishable under section-188 of the Indian Penal Code, 1860 and punishable under section-51 of Disaster Management Act, 2005.
2. The provision of section-195 of the Code of Criminal Procedure provides as under;

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) 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;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or,

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

3. The provision of Section-60 of the Disaster Management Act, 2005 is reproduced as under;

60. Cognizance of offences.—No court shall take cognizance of an offence under this Act except on a complaint made by—

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid.

4. So in view of section-195(1)(a) no court shall take cognizance of an offence punishable under section-188 or attempt to commit or abet to commit or 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 and the provision of section-60 of the Disaster Management Act, 2005 provides that no court shall take cognizance of offence under this Act except on a complaint made by competent person mentioned in the said section.
5. In this case, no such complaint in writing has been filed either by public servant concerned or by competent person against the accused for having committed an offence under section-188 of IPC and Section-51 of Disaster Management Act, 2005 respectively. Instead of filing complaint, the police authorities has registered FIR with respect to such offences and investigated such offences and submitted charge-sheet in this court as per section-173(2) of CrPC. So it transpires to this court that this court cannot take cognizance of offence punishable under section-188 of Indian Penal Code and offence punishable under section-51 of Disaster Management Act, 2005 on the basis of police report. So in view of the aforesaid discussion, the accused is required to be discharged with respect to such offences. So, I hereby pass following order in the interest of justice.

ORDER

1. The accused is hereby ordered to be discharged in connection with offence punishable under section-188 of Indian Penal Code in view of bar of section-195 of Code of Criminal Procedure, 1973.
2. The accused is hereby ordered be discharge in connection with offence punishable under section-51 of Disaster Management Act, 2005 in view of bar of section-60 of the Act of 2005.

Date : 10-07-2021
Place : Surat.

(Amitkumar Narendrabhai Dave)
Chief Judicial Magistrate, Surat
Code : GJ 00807