

Order Regarding Exhibit 1

1. This court has taken judicial notice of the fact that in the wake of Covid -19 ,many chargesheets ,as per section 173(2) of the Cr.P.C ,1973 , have been filed in this court,in some combinations of the following penal provisions -

a. Section 188 of I.P.C,1860

b.Section 3 of Epidemic Disease Act,1897(EDA)

c.Section 51 of Disaster Management Act,2005 (DMA)

d.Section 269 and / or 270 and / or 271 of I.P.C,1860

2. It to mention that for offence punishable under section 188 of IPC,no court shall take cognizance unless a complaint in writting has been 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 188 of IPC, by virtue of section 3 of EDA, hence,no court shall take cognizance unless a complaint in writting has been made as envisaged under section 195(1)(a) of CrPC. Likewise ,for the offence committed under section 51 DMA, no court shall take cognizance unless a complaint in writing has been made as envisaged under section 60 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 Guajrat ,in the case of Govardhan Kumar Thakordas Asrani vs. State of Gujarat ;2018(1) GLH 63, would be handy . Following was observed in the para 41 of the said judgment -

“ 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 observations ,is of the view that the said offences cannot be split from offences under section 188 of IPC or section 3 of EDA or section 51 of DMA because the peculiar facts of the case pending under section 269 and / or 270 and / or 271 of IPC, primarily and essentially discloses an offence which,in truth and substance ,arises either out of section 188 IPC or section 3 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 and section 3 of EDA or as envisaged under section 60 of DMA qua section 51 of DMA. Moreover , the cognizance under section 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.

Pronounced in open court on -11/09/2021

(Yogita Sharma)
8th Addl. Civil Judge & J.M.F.C
Surat .
Judge Code - GJ01529