

Criminal Case No. 5308 of 2021

Order below Exh.1

- (1) Perused the record. In this Case Investigating Agency has filed the Chargesheet against the accused under Section 188 of the Indian Penal Code, 1860 on the basis of 'First Information Report' lodged against the accused under the same section. On perusing the record, Investigation Agency filed the Chargesheet on the ground that accused violated the term of promulgation issued by the District Magistrate, and committed the crime under Section 188 of the Indian Penal Code, 1860. Accused has breached the notification promulgated by The Collector, which has been issued to curb the covid-19 pandemic. In Section 195 of the Code of Criminal Procedure, 1973, it is clearly provided that, No Court shall take cognizance of offence punishable under Section 172 to 188 (Inclusive of both Sections) of the Indian Penal Code, 1860, except on the Complaint in writing of the Public Servant concerned or of same other Public Servant to whom he/she is administratively subordinate.
- (2) In **Daulat Ram v/s. State of Punjab, 1962 AIR 1206**, Hon'ble Supreme Court described the scope of Section 195 of the Code of Criminal Procedure, 1973 and held that as per Section 195 of the Code of Criminal Procedure, 1973, the Complaint must be in writing by the Public Servant Concerned and if there is no compliance of this provision then the trial would be without jurisdiction and the conviction cannot be maintained.
- (3) In **Gaurishankar Jha v/s. Chintanath Jha**, Hon'ble Patna High Court held that if, it appears that when the cognizance has been taken and the defect of want of jurisdiction or absence of sanction crops up, then the Court should not proceed with the trial. If Witness have been produced by both sides when a Court has no jurisdiction or there is inherent want of sanction, the prosecution becomes bad, illegal and without jurisdiction. All proceedings

are to be dropped or complaint has to be dismissed but definitely no order of acquittal or discharge can be passed.

- (4) In **Kanjibhai v/s. State on 16th March, 2010, Criminal Misc. Application No. 348 of 1995**, Hon'ble High Court of Gujarat held in Para-7 that, in view of the provisions of Sub-Section (1) of Section 195, which expressly bars taking of cognizance of an offence under Section 188 except as provided thereunder, read with Section 2(d) of the Code, it was not permissible for the learned Judicial Magistrate to take cognizance of the offence in question on the basis of a Chargesheet filed pursuant to the First Information Report lodged by the Respondent No.2. In light of the provision of Section 195(1)(a), the Court could not have taken cognizance of the offence under Section 188 of the Indian Penal Code, 1860 except on a Complaint in writing by the Public Servant concerned or some other Public Servant to whom he/she is administratively subordinate.
- (5) In **Arvind Kejriwal & Ors. v/s. Amit Sibal & Anr., Criminal Misc. Application No.18920-21/2013**, it was held by the Hon'ble Delhi High Court that, if, the Trial Court proceeds to drop the proceedings qua petitioners, then the Apex Court's decision in **Adalat Pradad v/s. Rooplal Jindal and Ors. (2004) 7 SCC 338** would not stand in the way of Trial Court to do so.
- (6) As per the ratio laid down in the case of **P. D. Lakhani & Anr. v/s. State of Punjab & Ors. Reported in AIR 2008 SC (Supp) 1825**, the Hon'ble Apex Court has observed that a cursory reading of Section 195(1)(a) makes out that in case a Public Servant concerned who has promulgated an Order which has not been obeyed or which has been disobeyed, does not prefer to give a Complaint or refuses to give a Complaint then it is open to the Superior Public Servant to whom the Officer who initially passed of the Order promulgated by his subordinate. The Said decision is squarely applicable to the facts of the present Case.
- (7) In light of the afore noted decisions and as per the ratio laid down in the Case of

K. Prabhakar Rao v/s. State of A. P., decided on 25/11/2014 by the Hon'ble Apex Court, the proceeding of the present Criminal Case should be stopped as this Court is lacking the jurisdiction.

Hence, the present Criminal Case is disposed of as dismissed.

Pronounced in open Court today on this 10th day of July, 2021.

Date : 10/07/2021

Patan.

(Tejas Jitendrabhai Patel)

Chief Judicial Magistrate, Patan.

Judge Code No. *UI GJ 00959*