

ORDER BELOW EXH. 1
IN CRIMINAL CASE NO.2254/2022

1. Perused the record. In this case investigating police officer filed charge sheet against accused under section 188 of IPC on the basis of FIR lodged against the accused under the same section. In section 195 of Cr.P.C it is clearly provided that no court shall take cognizance of offence punishable under section 172 to 188 (inclusive of both sections) of Indian Penal Code except on the complaint in writing of the public servant concerned or of the same other public servant to whom he is administratively subordinate.
2. The provision of Section 195, CrPC being mandatory, any non-compliance thereto would necessarily vitiate the entire prosecution. While the trial and even conviction can be set aside for contravention of Section 195, CrPC, the FIR and investigation by the police is not rendered illegal by any means. The bar under Section 195, CrPC comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) CrPC.
3. In **Daulat Ram v/s. State of Punjab, 1962 AIR 1206**, Hon'ble Supreme Court described the scope of section- 195 of CrPC and held that as per Sec-195 of CrPC, the complaint must be in writing by the public servant concerned and if there is no compliance of these provision then the trial was without jurisdiction and the conviction cannot be maintained.
4. In **Kanjibhai V/s. State on 16 March, 2010. Criminal Misc. Application No. 348 of 1995**, Hon'ble Gujarat High Court held in para-7 that, in view of the provisions of subsection (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 First Class to take cognizance of the offence in question on the basis of a charge-sheet filed pursuant to the first information report lodged by the respondent No. 2. In light of the provisions of section-195(1)(a), the Court could not have taken cognizance of the offence under section-188 IPC except on a complaint in writing by the public servant concerned or some other public servant to whom he is administratively subordinate.
5. As per the ratio laid down in the case of **P. D. Lakhani and Anr. V/s. State of Punjab and 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 the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The public servant who is his official superior and under whose administrative control he works. The said decision is squarely applicable to the facts of the present case.

6. In light of the noted decisions and the charge-sheet was filed under section 188 of Indian Penal Code. As in offence under section 188 IPC, taking cognizance under section 195(1)(a) of Cr. P.C. is barred,(except otherwise provided) as discussed earlier, the proceeding of the present criminal case should be stopped, the court passes the following order according to section 258 of Criminal Procedure Code, 1973.

:- Order:-

The court passes the order to stop the proceeding under section 258 of Criminal Procedure Code, 1973.

Pronounced in special setting organized with Lok Adalat today on 12th day of November, 2022.

Place: Savli

Date: 12/11/2022

(Naushad V. Pathan)

Addl. Civil Judge & JMFC

Savli @ Vadodara

[UIC No. GJ 01413]