

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC. APPLICATION NO. 5736 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

VITTHALBHAI DHANJIBHAI PATEL
 Versus
 STATE OF GUJARAT

Appearance:

MR APURVA R KAPADIA (5012) for the Applicant(s) No. 1
 for the Respondent(s) No. 2

MR PRANAV TRIVEDI, ADDL. PUBLIC PROSECUTOR(2) for the
 Respondent(s) No. 1

CORAM: HONOURABLE MS. JUSTICE GITA GOPI

Date : 29/10/2021

ORAL JUDGMENT

1. Rule. Learned APP appears and waives service of notice of rule on behalf of both the respondents.

2. By way of this application filed under Section 482 of the Code of

Criminal Procedure, the applicant, original accused, has prayed to quash and set aside the complaint being FIR No.11214020200363 registered with Kamrej Police Station under Sections 186, 504 and 114 of IPC and all consequential proceedings initiated in pursuance thereof.

3. The facts in brief are as under:

The respondent No.2 herein filed the impugned complaint inter alia alleging that on 16.03.2020 when he had visited the farm of the applicant bearing Block No.356 and 357 at around 1400 hrs. for installing 7.5 HP electric connection, two persons were present at the site. It is alleged that the respondent-complainant spoke to the applicant on phone under the instructions of the two persons and was, thereafter, not permitted to install the electric connection and thus, had committed the offence punishable under Sections 186, 504 and 114 of IPC.

4. Heard learned advocates on both the sides. In this case, offence under Sections 186 and 504 read with 114 of the Indian Penal Code has been invoked. It is a well settled law that the invocation of Section 186 of IPC is subject to the provisions of Section 195 Cr.P.C. For our purpose, clause (a) of sub-section (1) of Section 195 is relevant. It reads thus:

“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, 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;.....”

4.1 A plain reading of the above provision shows that it bars the Court from taking cognizance of any offence punishable under Sections 172 to 188 or abetment or attempt to commit the same; unless there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of public servant. The legislative intent behind such a provision is that an individual should not face criminal prosecution instituted upon insufficient grounds by a person actuated by malice. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.P.C. that any person can set the law in motion by making a complaint, as it prohibits the Court from taking cognizance of certain offences unless and until a complaint has been made by some particular authority or person.

5. In the case of ***Daulat Ram v. State of Punjab, AIR 1962 SC 1206***, the Apex Court considered the nature of the provision of Section 195 Cr.P.C. In the said case, cognizance had been taken on the police report by the Magistrate and the appellant therein had been tried and convicted, though the public servant concerned, the Tahsildar, had not filed any complaint. The Court held as under:

“4.The cognizance of the case was therefore wrongly assumed by the Court without the complaint in writing of the public servant, namely, the Tahsildar in this case. The trial was

thus without jurisdiction ab initio and the conviction cannot be maintained.

5. *The appeal is, therefore, allowed and the conviction of the appellant and the sentence passed on him are set aside.”*

6. Considering the principle rendered in *Daulat Ram’s case (supra)*, the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has not been complied with and such complaint must be in writing. The provisions of Section 195 Cr.P.C. are mandatory in nature and the non-compliance thereof would vitiate the prosecution and all other consequential orders. The Court cannot assume cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be *void ab initio* being without jurisdiction. Under the circumstances, the impugned complaint deserves to be quashed and set aside on this ground alone.

7. For the foregoing reasons, the application is allowed. The impugned complaint being FIR No.11214020200363 registered with Kamrej Police Station and all the consequential proceedings initiated in pursuance thereof are quashed and set aside. Rule is made absolute.

(GITA GOPI, J)

PRAVIN KARUNAN