



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL PETITION NO.7341 OF 2022

BETWEEN:

1. MOHAMMED ADIL .C
S/O MOHAMMED FAROOQ .C
AGED ABOUT 27 YEARS,
R/AT NO.5, 3RD MAIN,
BHARATH MATHA LAYOUT
NEAR MAKKA MASJID, VENKATESHPURA,
KG HALLI, BENGALURU-560045.
2. ABDUL LATHIF .C S/O MOHAMMED FAROOQ .C
AGED ABOUT 31 YEARS,
R/AT NO.5, 3RD MAIN,
BHARATH MATHA LAYOUT
NEAR MAKKA MASJID, VENKATESHPURA,
KG HALLI, BENGALURU-560045.
3. IRFAN KHAN S/O DASTAGIR KHAN
AGED ABOUT 29 YEARS,
R/AT NO.1057, 13TH CROSS,
NEAR GANPATI TEMPLE,
GOVINDAPURA MAIN ROAD,
AC POST, BANGALORE-560045.
4. AKBAR KHAN S/O LATE AMAN ULLAH KHAN
AGED ABOUT 40 YEARS,
R/A PRESENT ADDRESS
NO.27/107, YALLAMMA TEMPLE ROAD,
2ND CROSS, GOVINDAPURA,
BANGALORE-560045.
5. KALEEM ULLA @ SHAHRUKH
S/O RAHAMUTHULLA

Digitally signed by
MAHALAKSHMI B M
Location: HIGH
COURT OF
KARNATAKA



AGED ABOUT 29 YEARS,
R/A NO.12, 11TH CROSS,
VINOBA NAGAR, K G HALLI,
BANGALORE-560045.

... PETITIONERS

(BY SRI MOHAMMED TAHIR, ADVOCATE)

AND:

NATIONAL INVESTIGATING AGENCY (HYDERABAD)
REP. BY SPL. PUBLIC PROSECUTOR
OFFICE AT HIGH COURT COMPLEX
OPP. TO VIDHANA SOUDHA
BANGALORE-560001.

... RESPONDENT

(BY SRI P. PRASANNA KUMAR, SPL. PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C. PRAYING TO QUASH THE CHARGE SHEET DATED 02.02.2021 AT ANNEXURE-D FILED IN SPL.C.C.NO.141/2021 BY THE RESPONDENT i.e., NATIONAL INVESTIGATION AGENCY (HYDERABAD), SAME IS PENDING BEFORE THE HON'BLE XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (SPECIAL COURT FOR TRIAL OF NIA CASES) (CCH-50), BENGALURU FOR THE OFFENCE P/U/S 120B, 143, 145, 147, 188, 353, 427, R/W 34 AND 149 OF IPC AND SECTION 2 OF PREVENTION OF DESTRUCTION OF LOSS OF PROPERTY ACT, 1981 AND CONSEQUENTLY QUASH THE COGNIZANCE ORDER DATED 16.02.2021 AT ANNEXURE-E PASSED BY THE HON'BLE XLIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (SPECIAL COURT FOR TRIAL OF NIA CASES) (CCH-50), BENGALURU, AGAINST THE PETITIONERS, WHEREIN THE PETITIONERS ARE ARRIVED AS ACCUSED NO.36, 37, 51, 53 AND 54.

Date on which the petition was reserved for Order	01.04.2025
Date on which the Order was pronounced	29.04.2025

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA



CAV ORDER

(Per: Hon'ble Mrs Justice K.S. Hemalekha)

The petitioners who are arrayed as accused Nos.36, 37, 51, 53 and 54 in Special Case No.141/2021 are seeking to quash the charge sheet dated 02.02.2021 for the offences punishable under Sections 120B, 143, 145, 147, 188, 353 and 427 read with Sections 34 and 149 of IPC and Section 2 of the Prevention of Destruction of Loss of Property Act, 1981 and order dated 16.02.2021 taking cognizance passed by the XLIX Additional City Civil and Sessions Judge (Special Court for Trial of NIA cases) (CCH-50) at Bengaluru ('Trial Court' for short).

2. On 11.08.2020 at about 8.45 p.m., a group of 25 to 30 people gathered in front of Kadugondana Halli (KG Halli) Police Station and started shouting slogans demanding arrest of one Naveen, nephew of Sri.Akhanda Srinivasa Murthy, MLA who had posted certain derogatory message on his facebook account, insulting the religious faith of the people who belonged to a particular religion. At about



8.50 p.m., another group of people under the leadership of one Syed Ikramuddin entered K.G.Halli police station, demanding registration of a case against Naveen and others. The complaint was accepted by the police and registered NCR for preliminary enquiry as a case vide FIR No. 195/2020 was already registered on the same set of fact at Devara Jeevana Halli (D J Halli) on 11.08.2020.

3. The gathering at K.G.Halli police station was increasing gradually and becoming violent. Considering the violent situation which had already erupted at D.J.Halli police station area and furthermore gathering at K.G.Halli police station on 11.08.2020 at 21.00 hours, the Commissioner imposed curfew in D.J.Halli and K.G.Halli police station areas. The gathering of mob turned unruly and intensified their protest, which led to untold incidents and registration of FIR against all those who were involved in the incidents that happened on that date. Initially a crime vide FIR No.229/2020, dated 12.08.2020 under Sections 143, 147, 148, 149, 332, 333, 353, 427 and 436 of IPC and Section 4 of the Prevention of Damage to Public Property Act, 1984



was registered against the petitioners and other unknown persons. The Central Government, Ministry of Home Affairs, New Delhi having regard to the gravity of offence directed the NIA to take up the investigation of the said case pursuant to which a charge sheet was filed against the petitioners for the offences punishable as aforesaid.

4. Heard the learned counsel appearing for the petitioners Sri Mohammed Tahir and the learned counsel Sri P Prasanna Kumar, appearing for NIA.

5. The petitioners' counsel argued that the cognizance taken by the trial Court for the offence punishable under Section 188 of the IPC, along with other offences, is improper due to the statutory bar under Section 195(1)(a) Cr.P.C. It is argued that the respondent should have filed a written complaint as required by the provision. It is argued that the charges under Sections 141, 143, 145, 147 of IPC are all related to the violation of Section 188 of the IPC. Therefore, they contend that the statutory bar under Section 195 (1) (a) Cr.P.C. should also apply to these



consequential offences, preventing cognizance from being taken without the required written complaint. Reliance is placed on the following decisions:

- i. ***Central Bureau of Investigation Vs. M. Sivamani***¹ (M. Sivamani)
- ii. ***State of Uttar Pradesh Vs. Suresh Chandra Srivastava and others***² (Suresh Chandra Srivastava)
- iii. ***Ramji Bhikha Koli and others Vs. State of Gujarat***³ (Ramji Bhikha Koli)
- iv. ***M.R. Ajayan Vs. State of Kerala and others***⁴ (M.R. Ajayan)
- v. ***Kevalbhai Dilipbhai Thanki and others Vs. State of Gujarat***⁵ (Kevalbhai Dilipbhai Thanki)
- vi. ***Rajashekharananda Swamiji Vs. The State of Karnataka***⁶ (Rajashekharananda Swamiji)

¹ (2017) 14 SCC 855

² (1984) 3 SCC 92

³ 1998 SCC Online Guj 296

⁴ 2024 SCC Online SC 3373

⁵ Crl. Misc. Appl No.23778/2019 DD 28.07.2023

⁶ WP No.13328/2018 D.D. 18.06.2021



6. Learned counsel for the petitioners submits that various High Courts, including our High Court by placing reliance on the decision of the Apex Court in the case of ***State of Karnataka Vs. Hemareddy @ Vemareddy and another***⁷ (Hemareddy) have ruled that no committal Court can take cognizance of offences listed under Section 195 Cr.P.C. without a written complaint from the concerned public servant. The counsel contends that the petitioners face charges under Section 188 IPC, which is covered by Section 195 Cr.P.C, and that the other charges, including Sections 120B, 143, 145, 147, 353, 427, 34 and 149 IPC, although not directly covered under Section 195, are part of the same transaction and should therefore be treated as interconnected offences.

7. Sri P. Prasanna Kumar, learned Special Public Prosecutor for NIA acknowledges that Section 195 (1) (a) of Cr.P.C. mandates that cognizance can only be taken if a written complaint is filed by the concerned public servant or their superior. However, the counsel argues that this

⁷ (1981) 2 SCC 185



provision should be interpreted in the light of its legislative intent. Specifically, the bar under Section 195 is designed to protect individuals from false or frivolous proceedings initiated by private parties. The counsel contends that the legislative intent does not extend this prohibition to offences that are not directly related to those specified under Section 195 (1) (a) Cr.P.C. Therefore, the absence of a complaint under Section 195 does not undermine the validity of the prosecution case, nor is fatal to the entire case. Reliance is placed on the following decisions:

- i. ***C. Muniappan and others Vs. State of Tamil Nadu***⁸ (C. Muniappan)
- ii. ***State of Karnataka Vs. Hemareddy @ Vemareddy and another***⁹ (Hemareddy)

8. Referring to ***Hemareddy's*** case, counsel for the NIA submits that the Apex Court dealt with a situation where multiple offences were committed during the same transaction, some of which require a written complaint under Section 195 (1) (b) Cr.P.C. and others do not. The Apex

⁸ (2010) 9 SCC 567

⁹ (1981) 2 SCC 185



Court observed that the prosecution cannot proceed with some charges (those not requiring a complaint) while holding back on other (those which do require a complaint), if they are all part of the offences committed in the *same transaction*.

9. Having heard the learned counsel on both sides, the question that falls for consideration before this Court is:

"Whether the non-compliance with the mandatory requirements under Section 195 (1) (a) of Cr.P.C. vitiates the cognizance of other distinct and unrelated offences charged against the accused, which are not incidental to or any intrinsically connected with the offences mentioned under Section 195 (1) (a) Cr.P.C.?"

10. To answer the question framed by this Court we need to consider and look into the provisions of Section 195 (1) (a) of Cr. P.C., which reads 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 other public servant to whom he is administratively subordinate.”

11. Section 195 (1) (a) Cr.P.C. imposes a jurisdictional bar on Courts from taking cognizance of certain offences punishable under Sections 172 to 188 IPC or any abetment of, or attempt to commit, such offence, or any criminal conspiracy to commit such offence, unless a complaint in writing is made by a public servant concerned or their superior. The intent of the legislature behind providing a particular procedure is to see that the individual should not face any criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal Courts being wasted by endless prosecution. The Apex Court



in the case of **C. Muniappan** stated *supra*, taking into consideration the intent behind such provision, has observed that the law does not permit taking cognizance of an offence under Section 188 of IPC unless there is complaint in writing by the competent public servant. It was observed that the absence of a complaint under Section 195 Cr.P.C. does not falsify the genesis of the prosecution case and is not fatal to the entire prosecution case.

12. The petitioners were charged for the offences made punishable under Section 188 IPC and also charged with other offences punishable under Sections 120B, 143, 145, 147, 353, and 427 read with Sections 34 and 149 of IPC, which are not covered under Section 195 Cr.P.C. The incident that occurred on 11.08.2020 at about 8.45 hours was regarding a gathering of 25 to 30 people in front of K.G. Halli Police station demanding the arrest of one Naveen. Gradually the crowd increased and the mob became violent. The Commissioner of Police, in view of the increasing crowd and violence, imposed curfew. The imposition of curfew is in furtherance of the formation of unlawful assembly. The



settled proposition is that where an accused commits some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein unless such other offences form an integral part of the same so as to amount to offences committed as part of the same transaction.

13. The other offences charged against the petitioners do not fall within the ambit of Section 195 nor they are integral part of the offence constituting and made punishable under Section 188 of IPC. The offences charged against the petitioners under Sections 120B, 143, 145, 147, 353 and 427 read with Sections 34 and 149 of IPC can be split as a separate offence from the offence that is barred under Section 195 (1) (a) of Cr.P.C.

14. The Apex Court in the case of **Hemareddy** examined the applicability of Section 195 (1) (b) Cr.P.C. which restricts the Courts from taking cognizance of certain offences, such as forgery, when the document in question has been presented in a judicial proceeding unless a



complaint is made by the Court concerned. The Court observed that *in case, where in the course of the same transaction an offence for which no complaint by a Court is necessary under Section 195 (1) (b) of Cr. P.C. and an offence for which a complaint of a Court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195 (1) (b) Cr.P.C should be upheld.*

15. The facts in **Hemareddy's** case are narrated here for better understanding of the dispute that evolved in **Hemareddy's** case. The dispute originated when Narsappa Eliger, the legatee of Nagappa's heir, discovered that the land belonging to Nagappa's family had been fraudulently sold. Pyatal Bhimakka (accused No.2), who falsely claimed to be Nagappa's wife, along with an accomplice, created forged deed to transfer ownership of land to Hemareddy @ Vemareddy (accused No.1). Upon uncovering this fraud, Eliger initiated both civil and criminal proceedings against the accused. The issue involved in the said case was whether



Hemareddy committed the offence of forgery under Section 467 and whether the proceeding against him was initiated in accordance with the procedural requirements under the Cr.P.C. The Civil Court ruled in favor of Eliger, and the Criminal Court convicted the accused for cheating and forgery. However, the High Court acquitted Hemareddy of the offence under Section 193 of IPC, holding that the complaint was filed by a private individual for prosecuting under that Section, as the offence was alleged to have been committed in or in relation to a proceeding in a Court by Hemareddy in his character as party to such proceedings. The High Court observed that for offences under certain Sections, a complaint by the Court is necessary, and such offences should be directly linked to proceedings in which the accused was a party at the time of offence.

16. However, the Apex Court in ***Hemareddy's*** case reviewed and clarified that offences under Sections 467 and 114 of IPC, which relate to forgery and abatement, do not require a complaint by the Court if the offence was committed independently of any Court proceeding or prior to



the accused becoming a party to such proceedings. The Apex Court observed that the offence of forgery was complete at the time of fabrication and registration of the forged document, and since the forged document was not produced or used in evidence in the relevant proceeding, the procedural requirement of a Court complaint under Section 195(1)(b) of Cr.P.C was not applicable. The Apex Court observed that the prosecution could be validly initiated by a private complaint for the offences under Sections 467 and 114 of IPC and the procedural restriction that applies to offence under Section 193 of IPC does not extend to these offences when they are committed outside or prior to Court proceedings. The Apex Court clarified that even if the same transaction involves multiple offences, some of which are subject to the procedural requirement of a Court complaint, the prosecution for offences like forgery under Section 467 and abatement under Section 114 can proceed based on private complaints without being barred by the provisions of Section 195(1)(b) of Cr.P.C. The Apex Court emphasized that the procedural restrictions are confined to offences



closely linked to judicial proceedings and do not extend to offences committed outside or prior to such proceedings.

17. Thus what can be gathered is, when the prosecution is for multiple offences arising out of the *same transaction*, the entire prosecution case is barred even if one of those offences falls within the mandatory complaint requirement under Section 195 (1) (b) of the Cr.P.C. The Apex Court in ***Hemareddy's*** case thus recognized a fine distinction with respect to the offences committed in the same transaction, emphasizing that they cannot be separated to circumvent the procedural safeguard prescribed under the law. In the present case, the other offences charged against the petitioners do not form the integral part of Section 188 so as to amount to offences committed as part of the same transaction and do not fall under the ambit of Section 195 (1)(a) Cr.P.C. The requirement of formal complaint from a public servant under Section 195 (1) (a) of Cr.P.C applies specifically to the offences enumerated under Sections 172 to 188 IPC. The accused is charged with the additional offences outside Section 195 (1) (a) Cr.P.C., the



absence of such complaint does not invalidate the entire prosecution.

18. At this juncture it is necessary to address the precedents relied upon by the petitioners.

19. The Apex Court in the case of ***Sivamani***, stated *supra*, observed that when an investigation is ordered by the High Court, the bar under Section 195(1)(a) Cr.P.C. does not apply and further observed that in such circumstances taking cognizance of the offences without a separate complaint from the public servant was justified. The legal context, statutory provisions involved and factual background in ***Sivamani's*** case are entirely distinct and the said judgment has no application to the facts and legal issues in the present case. The Apex Court in the case of ***Sureshchandra***, stated *supra*, where the facts were regarding the applicability of Section 195(1)(b)(ii) Cr.P.C. restricts Court from taking cognizance of specific offences, such as forgery, when they are alleged to have been committed concerning documents produced or given in evidence in a Court, without a



complaint in writing by that Court. The Apex Court in the facts of that case which was regarding the forgery of Court fees stamps observed that the alleged forgery did not involve documents produced or given in evidence in Court proceedings and therefore the bar under Section 195(1)(b)(ii) Cr.P.C. was not applicable. The decision rendered does not assist the petitioner in the current factual and legal context. The Gujarat High Court in the case of ***Ramji Bhikha Koli***, *stated supra*, in the facts and circumstances of the said case observed that the offences charged against the petitioner therein under Sections 143, 147, 148, 149, 332, 333 and 307 of IPC cannot be split from the complaint for a separate offence and thereby held that the cognizance in respect to said offences are also barred under Section 195(1)(a)(i) of Cr.P.C. The said decision is distinguishable; it is not applicable to the present facts as the petitioner was charged with an offence made punishable under Section 188 of IPC and the other offences made punishable under Section 143, 147, 148, 149, 332, 333 and 307 of IPC. The other offences are separate and distinct



from those contained in Section 195 and do not form an integral part of the same transaction. Hence the said decision is not applicable to the present facts.

20. In the case of **M R Ajayan**, *stated supra*, the case originated from allegations of evidence tampering. The issue involved therein was whether the bar under Section 195(1)(b) Cr.P.C. precluded the initiation of proceedings for evidence tampering without a complaint from the Court concerned. The Apex Court emphasized that in matters of significant public interest, especially those concerning the administration of justice, the threshold for *locus standi* is relaxed to allow individuals with *bona fide* intention to seek judicial redress. The Apex Court clarified that the bar under Section 195(1)(b) is not attracted when the High Court, acting as a superior Court directs a complaint to be filed. The facts and the law declared by the Apex Court in the case of **M R Ajayan** is distinguishable and not applicable to the present facts as the case on hand involves multiple IPC offences which are not dependant upon Section 188 of IPC. Thus, the bar under Section 195 Cr.P.C. cannot extend to the



entire prosecution in this case. The decision of the Gujarat High Court in the case of ***Kevalbhai Dilipbhai Thanki*** took similar view as in the case of ***Ramji Bhikha Koli*** and observed that the offences other than one punishable under Section 195 Cr.P.C. are inseparable and are related to the offence for which a complaint of the Court or of a public servant is required or mandatory then a bar created under Section 195 of Cr.P.C. has to be invoked.

21. The decision of this Court in the case of ***Rajashekharananda Swamiji***, *stated supra*, is also distinguishable and not applicable to the present facts and do not aid the petitioners' contention.

22. A close scrutiny reveals that the decision relied on by the petitioners are not applicable to the present facts either on facts or law and hence cannot be of any assistance to the petitioners.

23. In the instant case, the investigation conducted by the respondent reveals that on 11.08.2020, a large crowd, consisting of 25 to 30 people, gathered outside the



K.G. Halli Police station, demanding the arrest of an individual named Naveen. As the crowd grew in number and became increasingly violent, the Commissioner of Police imposed curfew. Curfew was imposed only after formation of unlawful assembly and escalation of situation. The petitioner's argument that the offences under Sections 141, 143, 145 and 147 of the IPC (which deal with unlawful assembly and rioting) are incidental to the offence under Section 188 of the IPC (which concerns disobedience of public orders) is rejected for the reason that the formation of unlawful assembly and the violence occurred prior to the imposition of the curfew, which means that the offences under the IPC were already committed, thus they were independent offence under Section 188 of IPC. The contention that absence of a written complaint under Section 195 Cr.P.C. vitiates the entire proceeding is therefore untenable, and the point framed for consideration is answered accordingly, and this Court passes the following:

ORDER

Criminal Petition is hereby ***dismissed***.



Per: Hon'ble Mr Justice Sreenivas Harish Kumar

At the outset I express my full concurrence to the reasons recorded by Hon'ble Mrs. Justice K.S.Hemalekha. But I think that a further analysis is necessary to hold that the issue raised by Sri Mohammed Tahir is not worth acceptance.

2. His argument was that since it is alleged that offence under Section 188 of IPC was committed, prosecution of the petitioners for the said offence and other IPC offences on a police report under Section 173 of Cr.P.C. is vitiated inasmuch as whenever offences punishable under Sections 172 to 188 of IPC are committed, court cannot take cognizance without a complaint in writing of the public servant concerned or some other public servants to whom he is administratively subordinate. He also made it a point of argument that just because the NIA took over investigation and invoked the offences punishable under Sections 15, 16, 18 and 20 of the UAP Act besides the offences punishable under Sections 120B, 143, 145, 148, 353 and 427 read with Section 149 of IPC and Section 2 of Prevention of Damage to



Public Property Act, it does not give jurisdiction to the court to take cognizance of the offences because of presence of Section 188 of IPC. He vehemently argued that only the complaint as envisaged under Section 2(d) of Cr.P.C. could be filed, and not a charge sheet.

3. Sri P.Prasanna Kumar, learned Spl.PP for the respondent/NIA argued that even before the Commissioner of Police imposed curfew, about 25 to 30 people had gathered in front of K.G.Halli police station demanding arrest of Naveen. The crowd increased and turned violent. It was an unlawful assembly for committing various offences. Curfew was imposed after formation of unlawful assembly. Therefore the offence under Section 188 of IPC was subsequent to occurrence of other offences under IPC, and in these circumstances the police or the NIA could file charge sheet and a complaint is not necessary at all. He also argued that the bar contained under Section 195(1)(a) of Cr.P.C. is to protect an innocent person from a false or frivolous proceeding instituted by a private person. In this case investigation was undertaken by the NIA pursuant to



the order of the Central Government and for this reason embargo contained under Section 195 of Cr.P.C. cannot be pressed into service.

4. Sri Mohammed Tahir has placed reliance on the judgment of the Supreme Court ***in Central Bureau of Investigation v. M.Sivamani***¹⁰. The Hon'ble Supreme court has held as below:

12. We have considered the rival submissions. We find merit in the contention raised on behalf of the appellant. While the bar against cognizance of a specified offence is mandatory, the same has to be understood in the context of the purpose for which such a bar is created. The bar is not intended to take away remedy against a crime but only to protect an innocent person against false or frivolous proceedings by a private person. The expression "the public servant or his administrative superior" cannot exclude the High Court. It is clearly implicit in the direction of the High Court quoted above that it was necessary in the interest of justice to take cognizance of the offence in question. Direction of the High Court is at par with the direction of an administrative superior public servant to file a

¹⁰ 2017(14) SCC 855



complaint in writing in terms of the statutory requirement. The protection intended by the Section against a private person filing a frivolous complaint is taken care of when the High Court finds that the matter was required to be gone into in public interest. Such direction cannot be rendered futile by invoking Section 195 to such a situation. Once the High Court directs investigation into a specified offence mentioned in Section 195, bar under Section 195(1)(a) cannot be pressed into service. The view taken by the High Court will frustrate the object of law and cannot be sustained.

(emphasis supplied)

5. Therefore from the above decision it is clear that the embargo found in Section 195 of Cr.P.C. is to protect an innocent person from a false or frivolous proceeding initiated by a private person. If a public servant initiates criminal action, it conveys a meaning that in all probability the proceeding initiated is not on false ground. That apart the issue that has been raised in this writ petition can be examined from another angle which is as below.

6. Section 190 of Cr.P.C. enables a Magistrate to take cognizance of any offence,



- (i) *Upon receiving a complaint of facts which constitute an offence*
- (ii) *upon a police report of such facts*
- (iii) *upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*

7. If an FIR is registered, necessarily the police officer has to investigate and submit a report under Sections 168 or 173 of Cr.P.C. That means whenever investigation is by the police, the court can take cognizance only upon a report of the police as envisaged under Section 190(b) of Cr.P.C. A police officer is not expected to file a complaint. Section 2(d) of Cr.P.C. defines a complaint as below:

"2.....

(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."



8. It is clear that complaint does not include a police report. Section 195(1)(a) of Cr.P.C. clearly bars taking cognizance except on a complaint of the public servant concerned or some other public servant to whom he is administratively subordinate in respect of any offence punishable under Sections 172 to 188 (both inclusive) of IPC; or any abetment of, attempt to commit such offence, or of any criminal conspiracy to commit such offence. The offences mentioned in Section 195(1)(b)(i) to (iii) require a complaint in writing by the court or an officer of the court.

9. In the case on hand Section 188 of IPC was invoked and this was the reason for the petitioners' strong objection to taking cognizance on a charge sheet submitted by the NIA. The offences made punishable under Sections 172 to 190 fall under Chapter-X of IPC and they relate to showing contempt to the lawful authority or a public servant. Section 195 (1)(a)(i) restricts applicability of the embargo only for the offences under Sections 172 to 188 of IPC,



offences under Sections 189 and 190 are excluded. Some of the offences under Sections 172 to 188 are cognizable and some are non-cognizable. The offence under Section 188 of IPC is cognizable. Whenever other offences under IPC and other laws are invoked along with any of the offences under Sections 172 to 188 of IPC, what actually is the procedure to be followed by a court for taking cognizance is not clearly found in Cr.P.C. But this position can be clearly explained away with reference to Section 198 of Cr.P.C. The said section deals with taking cognizance of an offence relating to marriage upon a complaint only. If there is an allegation against a husband of committing an offence under Section 498A of IPC along with Section 494 of IPC, can it be said that the court cannot take cognizance upon a charge sheet filed by the police for the offences under Sections 494 and 498A of IPC. The answer to this is found in the decision of the Hon'ble Supreme Court in ***State of Orissa v. Sharat Chandra Sahu and another***¹¹.

¹¹ AIR 1997 SC 1



10. The facts in this case were that the wife approached Women's Commission with grievances that her husband had contracted second marriage and that she used to be harassed for the sake of money. The Women's Commission forwarded the wife's written complaint to the police who later on registered FIR, held investigation and filed charge sheet in the court of Sub-Divisional Judicial Magistrate for the offences under Sections 494 and 498A of IPC. The husband challenged the charges framed against him by filing a petition under Section 482 of Cr.P.C. The High Court passed an order quashing the charge under Section 494 of IPC on the ground that the wife herself should have filed a complaint personally in view of Section 198(1) of Cr.P.C., however charge under Section 498A was sustained for trial. In this context, taking note of Section 198 and Section 155 of Cr.P.C. the Hon'ble Supreme Court held as below:

14. The High Court was thus clearly in error in quashing the charge under Section 494 I.P.C. on the ground that the Trial Court could not take cognizance of that offence unless a complaint was filed



personally by the wife or any other near relation contemplated by Clause (c) of the Proviso to Section 198(1).

15. The Judgment of the High Court being erroneous has to be set aside. The appeal is consequently allowed. The Judgment and order dated 3rd May, 1995 passed by the Orissa High Court in so far as it purports to quash the charge under Section 494 I.P.C. and the proceedings relating thereto is set aside with the direction to the Magistrate to proceed with the case and dispose it of expeditiously.

11. To come to above conclusion, the Supreme Court recorded the reasons which are found in paras 10 to 13, that are as follows:

10. Sub-section (4) of this Section clearly provides that where the case relates to two offences of which one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offence or offences are non-cognizable.

11. Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the



non-cognizable offences. Since the whole case (comprising of cognizable and non-cognizable offences) is to be treated a cognizable, the police had no option but to investigate the whole of the case and to submit a charge- sheet in respect of all the offences, cognizable or non- cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.

12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non- cognizable offences by the police without the leave of the Magistrate. The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in Sub-section (4) provides that even non- cognizable.

13. This Court in Preveen Chandra Mody vs. State of M.P. AIR 1965 SC 1185 has held that while investigating a cognizable offences and presenting a charge-sheet for it, the police are not debarred from investigation any non- cognizable offence arising out



of the same facts and including them in the charge-sheet.

12. The above judgment finds pertinence not in view of applicability of Section 155(4) of Cr.P.C., but in view of permitting prosecution upon charge sheet filed by police for the offences under Sections 494 and 498A of IPC. If strict interpretation is given, the whole proceeding should have been quashed for want of complaint by the wife. Applying the same analogy here, order of taking cognizance cannot be said to be invalid or bad for want of complaint in accordance with Section 195(1)(a) of Cr.P.C. Position is different if offence under Section 188 of IPC alone is committed; in that event a complaint needs to be filed. Illustration to Section 188 of IPC gives an inkling to understand its scope. A public servant issues a promulgation prohibiting a procession being taken in a certain street; it is disobeyed causing a danger of riot. If riot had taken place after promulgation, the offence of riot becomes integral part of Section 188 of IPC necessitating in that event a complaint to be filed. Conversely by the time promulgation was issued, some



offences in respect of which police can conduct investigation had already taken place, the police can file charge sheet for all the offences including Section 188 of IPC. The present case falls under second category. Besides this there is an allegation that there was conspiracy to commit offences. But there could be no conspiracy to commit offence under Section 188 of IPC; if at all there were to be any conspiracy it was for committing other offences, not the one under Section 188 of IPC, which appears to be incidental here.

13. Sri Mohammed Tahir has relied on two orders passed by two single judge benches of this court in W.P.No.13328/2018 and Crl.P.No.2896/2022 following judgment of Supreme Court in **Hemareddy** (supra) where there is a reference to Section 195(1)(b) of Cr.P.C. Section 195(1)(a) and Section 195(1)(b) indeed require a complaint to be filed, but Section 195(1)(a) requires complaint to be filed by a public servant, and according to Section 195(1)(b), complaint can be filed only by a court or a duly authorized officer of the court. Clear distinction between clauses (a) and (b) of Sub-section (1) of Section 195 of Cr.P.C. is



apparent. Therefore the ratio in **Hemareddy** is not helpful to the petitioners.

14. As has been held by the Supreme Court in **C.Muniappan and Others v. State of Tamilnadu¹²**, the real test is whether facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. It is held as below:

"29. The test of whether there is evasion or non-compliance of Section 195 Cr.P.C or not, is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of a public servant is required. In Basir-ul-Haq & Ors. v. The State of West Bengal, AIR 1953 SC 293; and Durgacharan Naik & Ors v. State of Orissa, AIR 1966 SC 1775, this Court held that the provisions of this Section cannot be evaded by describing the offence as one being punishable under some other sections of IPC, though in truth and substance, the offence falls in a category mentioned in Section 195 Cr.P.C. Thus, cognizance of such an offence cannot be taken by mis-describing it or by putting a wrong label on it."

¹² (2010) 9 SCC 567



15. Here the facts do not disclose that offences of that type in relation to which a public servant could set law into motion by filing a complaint, had taken place. The NIA, which is a responsible investigation institution, having noticed that the nature and gravity of offences was a threat to unity and integrity of the nation took over investigation upon its entrustment to it, and filed the charge sheet. In case offence under Section 188 of IPC had been omitted from the charge sheet, it would not have affected the prosecution case. Applying this test, it can very well be said that there is no scope for applying Section 195(1)(a) of Cr.P.C. For all these reasons the argument of Sri Mohammed Tahir fails and therefore this criminal petition deserves dismissal.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K.S. HEMALEKHA)
JUDGE