

ORDER-SHEET FOR MAGISTRATE'S RECORDS

RICTS

IN THE COURT OF

of 200

SMTI. DEEPSIKHA DAS, J.M.F.C, DIBRUGARH

of

Versus

G.R.- 2397/2022

PRC- 23/2022

No. Of Orders	Date	Order	Signature
	05/01/22	<p>Case record is received on transfer for disposal from Learned CJM, Dibrugarh.</p> <p>I have perused the charge sheet and other materials available on record. On such perusal, it reveals that the instant case is charge- sheeted u/s 188 of IPC.</p> <p>However, At this juncture, I would like to highlight Section 195 of Cr.P.C. which bars the Court from taking cognizance of an offence punishable under Section 188 of IPC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.</p> <p>Now, Section 2(d) of the Cr.PC provides the definition of "Complaint" as 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.</p> <p>The Hon'ble Apex Court of India in the case of C. Muniappan vs State of Tamil Nadu (2010) 9 SCC 567, observed that Section 195(1)(a) of Cr.P.C. bars the Court from taking cognizance of any offence punishable under Section 188 of IPC unless there is 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 case of contempt of lawful authority of the public servant. The Court lacks competence to take cognizance with respect to Section 188 of IPC.</p>	

NOTE:-This form should be written up in English whenever possible (Sec. Vol. I, Chapter-III, Rule 22).

05/01/22

In the cases of **State of Punjab vs Raj Singh**

AIR (1998) SC 768 and **M. Narayandas vs State of Karnataka (2003) 11 SCC 251**, the Hon'ble Apex Court of India observed that from the plain reading of Section 195 of Cr.P.C., it is manifest that it comes into operation at the stage when the Court intend to take cognizance of an offence under Section 190(1)(b) of Cr.P.C. and it has nothing to do with the statutory power of Police to investigate into an FIR which discloses a cognizable offence. The statutory power of Police to investigate under the Code is not in any way controlled or circumscribed by Section 195 of Cr.P.C. It is of course true that upon the charge sheet, if any, filed on completion of the investigation into such an offence, the Court would not be competent to take cognizance thereof in view of the embargo under Section 195(1)(a) of Cr.P.C.

In light of the aforesaid discussion and in consonance with the judgments laid down by the Hon'ble Apex Court of India, the cognizance of the offence punishable under section 188 IPC is not taken as the case in its present form is not maintainable.

Accordingly, this case is disposed of.


J.M.F.C
Judicial Magistrate 1st Class
Dibrugarh