2019 (0) AIJEL-HC 240212

GUJARAT HIGH COURT

Hon'ble Judges:A.S.Supehia, J.

Mohmadmohsin Mohmadirfan Chhalotiya Versus State Of Gujarat

SPECIAL CRIMINAL APPLICATION No. 4105 of 2017 ; *J.Date :- FEBRUARY 15, 2019

- INDIAN PENAL CODE, 1860 Section - 186 , 189 , 506(1)
- CODE OF CRIMINAL PROCEDURE, 1973 Section - 195(1)(a) , 482

(a) Code of Criminal Procedure, 1973 - S. 195(1)(a) - two distinct offences - bar of taking cognizance - FIR registered for the offence punishable u/s. 186, 189 and 506(1) of IPC - whether bar will attract other offences, which are not included in S. 195(1)(a) of CrPC - held, there is no bar of taking cognizance u/s. 195(1)(a) of CrPC if offences are separate and distinct having different ingredients and characteristics from those contained in S. 195(1)(a) of CrPC - bar of taking cognizance u/s. 195 of CrPC will apply if offences cannot be segregated and they form integral part offence committed as part of same transaction. (Para 6,17,18)

(b) Code of Criminal Procedure, 1973 - S. 482 - Indian Penal Code, 1860 - S. 186, 189, 506(1) - quashing of FIR - threat of injury to public servant - in order to constitute any threat of injury there must be intention to inflict injury, loss or pain - in present case, contents of FIR reveal that petitioner had uttered words "I will see you all" and will approach High Court against them - held, the same does not satisfy the ingredients of expression 'threat of injury' - since merely during altercation said such words, if petitioner utters such words will not amount to an intention to inflict injury, loss or pain - mere threat to approach the High Court does not denote injury - hence, consequential proceedings arising out of impugned FIR quashed and set aside - petition allowed. (Para 21)

Imp.Para: [6] [17] [18] [21]

Cases Relied on :

1. Basir-ul-haq Vs. State Of W.B., AIR 1953 SC 293
2. Pankaj Aggarwal Vs. State Of Delhi, 2001 5 JT 233
3. Satis Chandra Chakravarti V. Ram Dayal De, AIR 1921 Cal 1
4. State Of Karnataka Vs. Hemareddy Alias Vermareddy & Anr., 1981 2 SCC 185

5. State Of U.P. Vs. Suresh Chandra Srivastava And Ors., AIR 1984 SC 1108

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2019 (1) AIJ(DG) 156 : 2019 (1) GLH 693

JUDGMENT :-

1 By way of the present writ petition under Section 482 of the Code of Criminal Procedure, 1973 (the Cr.P.C.), the petitioner seeks quashing of First Information Report (F.I.R.) being C.R. No.II-3036 of 2017 registered with Prantij Police Station, District Sabarkantha for the offences punishable under sections 186, 189 and 506(1) of the Indian Penal Code, 1860 (IPC).

2 The contents of the F.I.R. as mentioned in the memo of the application are as under:

> 2.1) The complainant is a Police Head Constable (Batch No.889) working at Prantij Police Station, District Sabarkantha. On 17.5.2017, Dr. Jinesh Rathod lodged an F.I.R. bearing No.I-81 of 2017 against some persons viz. (i) Sartajmiya Gulammohmad Sumra, (ii) Moinmiya Gulammohmad Sumra; (3) Irfan Ahmad Nasirkhan Sumra; (iv) Sohebmiya Nasirkhan Sumra. On 18.05.2017 at around 10:00 a.m. Assistant Sub-Inspector (ASI) Mohanbhai Bhikhabhai (Batch No.1163) detained all the abovenamed accused and kept them in the lockup and called the complainant. By around 3:00 p.m. the petitioner came to the police station and started talking to all the detained persons thereafter, the complainant told the petitioner to move away from the lockup area but the petitioner raised his voice. Hearing such voice of the petitioner, 2-3 police constables approached the petitioner and asked him to leave the place but the petitioner told them that he had come there for the public welfare. Further the petitioner told them that he is an advocate by profession then the complainant asked him not to interfere in the police proceedings, after hearing this the petitioner got provoked and told them that he will see everyone and will approach the High Court against them. After such arguments, the Police Inspector confined the petitioner into the lockup and, therefore, the impugned F.I.R. is lodged against the petitioner alleging that he had obstructed the lawful exercise of public functions.

3 Learned advocates Mr.Syed with Mr.Ansari appearing on behalf of the petitioner has submitted that the F.I.R. do not prima facie constitute any offence against the petitioner. It is submitted that a bare reading of the sections, under which the offences are alleged against the petitioner, clarify that the offence as alleged in the F.I.R. is not established. It is submitted that the clients of the petitioner were arrested at 10 a.m. on 18.05.2017 and the F.I.R. against them was lodged at 3:35 p.m. meaning thereby, that the petitioner had a valid reason to visit the Police Station at the request of his clients' relatives and represent them to secure their fundamental rights.

> 3.1) The learned advocate for the petitioner submitted that the petitioner had went to the lockup for providing legal aid to his clients, who were locked up in the Police Station in connection with the F.I.R. lodged by Dr. Jinesh Rathod being C.R. No.I-81

of 2017. It was submitted that the dispute was pertaining to the cross-FIR against Dr.Jinesh Rathod being C.R. No.I-82 of 2017, which was lodged by Nasimbanu Mohmad Sartaj Gulammohmad Sumra. In connection with the aforesaid FIRs the petitioner went to meet his clients on their request.

3.2) The learned advocate for the petitioner submitted that there is no law which bars an advocate for providing legal advise to his client and this act of the complainant by arresting the petitioner and putting him in the lockup room itself bars the fundamental rights of the prisoner. It was submitted that there is no statement in the F.I.R. from which it transpires that the petitioner restricted the police officer from exercising their powers.

3.3) Reliance was placed by the learned advocate for the petitioner on the decision rendered by the Apex Court in the case of Arnesh Kumar vs. State of Bihar, 2014 (8) S.C.C. 273 and it was submitted that the act of the first informant is in violation of the guidelines laid down in the said judgement. It was submitted that this act of the first informant has disturbed the balance between individual liberty and societal order while exercising the powers of arrest. It was submitted that from the F.I.R. it transpires that the action of the police in quick arrest was an outcome of oblique motive and actually there was no offence made out by the petitioner as alleged in the F.I.R. It was submitted that even otherwise the PSO is the observer and a guard to the prisoners, who is seated merely at a distance of 4 ft. from the lockup room and in front of the lockup room, which makes him very well audible to the conversations between the convict and the persons who visit the prisoners. It was submitted the F.I.R. is an afterthought and lodged with an oblique motive to implicate and pressurize the petitioner and his clients and hence, the impugned F.I.R. requires to be quashed and set aside.

3.4) The learned advocate for the petitioner submitted that the F.I.R. itself could not have been filed for the offences punishable under sections 186 and 189 of the IPC in light of statutory bar under section 195 of the Cr.P.C.

3.5) The learned advocate for the petitioner submitted that a bare reading of the F.I.R. would show that:

(a) The F.I.R. is in relation to the offence covered by section 195(1)(a)(i) of the Cr.P.C.

(b) the F.I.R. is not a 'complaint' within the meaning of section 2(d) of the Cr.P.C since it is not '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 the same is a police report and hence, the execution of the F.I.R. would be void ab intio.

3.6) The learned advocate for the petitioner submitted that the offence under sections 186 and 189 of the IPC cannot be made out since the elements essential to constitute the offences are not made out. It was submitted that for an offence under section 186 of the Cr.P.C., the prosecution has to prove prima facie that there

was an obstruction, and the same was voluntary. It was submitted that as an advocate, the petitioner was entitled to meet his clients. On the contrary, the F.I.R. itself speaks of the police officers obstructing the petitioner from meeting his clients.

3.7) It was submitted that the petitioner has indisputably not obstructed registration of the F.I.R. nor even interrogation of the accused persons and, therefore, it cannot be said that the petitioner has committed an offence. Reliance is also placed on the judgement of this court dated 31.01.2017 rendered in Special Criminal Application No.7751 of 2015 (in the case of Ramesh Kamabhai Parmar vs. State of Gujarat), wherein this court quashed the F.I.R., where the petitioner was charged with the offences punishable under sections 186 and 332 of the IPC.

3.8) The learned advocate for the petitioner submitted that this court has very preciously observed in the aforesaid judgement while addressing the issue whether the court concerned could have taken cognizance of the offence under section 186 of the IPC on a police report that The issue is no longer res integra section 186 of the IPC is to be found in section 195 of the Cr.P.C. Section 195 of the Cr.P.C. makes it abundantly clear that no court shall take cognizance of the offence punishable under section 186 of the IPC except upon a complaint in writing by the public servant or any other officer subordinates to the public servant. It was submitted that section 2(d) of the IPC defines the complaint, which clearly restricts inclusion of a police report in the definition of complaint. It was submitted that the F.I.R., which is not a complaint is required to be quashed.

3.9) Reliance was also placed by the learned advocate for the petitioner on the decision of the Apex Court in the case of State of Karnataka Vs. Hemareddy alias Vermareddy & Anr. (1981) 2 S.C.C. 185 as well as Criminal Misc. Application No.12768 of 2012 vide order dated 15.11.2014 (in the case of Sureshbhai Damjibhai vs. State of Gujarat).

4 On the other hand, this writ application has been vehemently opposed by Mr. Mitesh Amin, the learned Public Prosecutor appearing for the State respondent. He has reiterated his submissions as recorded by the coordinate bench of this court in the judgement dated 03.11.2017 rendered in Criminal Misc. Application No.7913 of 2017. Mr.Amin submitted that the statutory powers of the police to investigate a cognizable offence under the Cr.P.C. is not in any way controlled or circumscribed by Section 195 of the Cr.P.C. Mr.Amin submitted that Section 195 of the Cr.P.C. comes into operation at the stage when the Court intends to take cognizance of an offence under Section 190(1) of the Cr.P.C. and it has nothing to do with the statutory power of the police to investigate into an F.I.R. disclosing a cognizable offence in accordance with Chapter-XII of the Cr.P.C. Mr.Amin very fairly submitted that it is only upon the filing of the charge-sheet, when the Court is called upon to take cognizance of the offence on the basis of the police report that the bar of Section 195 of the Cr.P.C. would come into play. Mr.Amin submitted that in the F.I.R., over and above Section 186 of the IPC, there are other offences also of the IPC, which are not covered by Section 195 of the Cr.P.C. According to the learned Public Prosecutor, ultimately, at the end of the investigation, the police may not file charge-sheet

for the offence punishable under Section 186 of the IPC and may file charge-sheet only for the offence punishable under Sections 186, 189 and 506(1) of the IPC. Mr.Amin submitted that the offcnes under sections 189 and 506(1) of the IPC and Section 186 of the IPC are distinct offences. The ingredients necessary to constitute the two distinct offences under the same are altogether different. Mr.Amin submitted that the quality of the offence is also different. Mr.Amin tried to develop an argument that if charge-sheet is filed by the police for both the offences i.e. Sections 186 and 506(1) of the IPC, even then it would be open for the Court concerned to take cognizance of the other offences of the IPC, excluding Section 186 of the IPC in view of the bar of Section 195 of the Cr.P.C. In support of his submission, reliance is placed upon the judgment of the Apex Court in the case of Basir-ul-Haq vs. State of W.B., AIR 1953 S.C. 293.

5 I have given my thoughtful consideration to the submissions advanced by the learned advocates for the respective parties. The documents as pointed out by them are also perused.

6 The core issue which needs deliberation in the present case is whether the impugned F.I.R. is barred under the provisions of section 195(1)(a) of the Cr.P.C. The F.I.R. has been registered for the offence punishable under sections 186, 189 and 506(1) of the IPC and whether such bar will attract other offences, which are not included in section 195(1)(a) of the Cr.P.C.

7 In order to appreciate the rival contentions on the aforesaid issue, it will be apposite to have closer look at some of the decisions of the Supreme Court for ascertaining the true nature and import of the provisions of section 195 of the Code. Section 195 of the Cr.P.C. reads as under:

> Section 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, or
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> (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 of some other public servant to whom he is administrative subordinate;
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> (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
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> (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have

been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), a [except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed. (Emphasis supplied by me)

8 The first in point of time is the decision of the Supreme Court is in the case of Basir-ul-Haq (supra). (The relevant sections considered are sections 182, 297 and 500 of the IPC). The relevant observations are incorporated as under:

14. Though, in our judgment, Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the

offence as being one punishable under some other section of the Indian penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section of the Code of Criminal Procedure. Merely by changing the garb or label of an offence which is essentially all offence covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by mis-describing it or by putting a wrong label on it.

9 Thus, the Supreme Court has approved the decision of the Full Bench of the Calcutta High Court in the case of Satis Chandra Chakravarti v. Ram Dayal De, AIR 1921 Cal 1, and has held that section 195 of the Cr.P.C does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages.

10 In the case of Durgacharan Naik and Ors. vs State of Orissa, AIR 1966 SC 1775, (the relevant sections considered are sections 186, 353 of the IPC and 195(1) of the Cr.P.C.) the Supreme Court, while approving the judgment of Full Bench of Calcutta High Court, has held thus:

5. It is true that most of the allegations in this case upon which the charge under section 353, Indian Penal Code is based are the same as those constituting the charge under section 186, Indian Penal Code but it cannot be ignored that sections 186 and 353, Indian Penal Code relate to two distinct offences and while the offence under the latter section is a cognizable offence, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under section 353, Indian Penal Code the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the Indian Penal Code dealing with Contempts of the lawful authority of public servants, while s. 353 occurs in Ch. XVI regarding the offences affecting the human body. It is well established that section 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section. In Satis Chandra Chakravarti v. Ram Dayal De(1) it was held by Full Bench of the Calcutta High Court that where the maker of a single statement is guilty of two distinct offences, one under section 211, Indian Penal Code, which is an offence against public justice, and the other an offence under section 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the court concerned, as the Criminal Procedure Code has not provided for sanction of court (1) 24 C.W.N. 982. (AIR 1921 Cal 1), it was held by the Full Bench of the Calcutta High Court that where the maker of a single statement is guilty of two distinct offences, one under section 211.I.P.C, which is an offence against public justice, and the other an offence under 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the Court concerned, as the Criminal Procedure Code has not provided for sanction of

Court for taking cognizance of that offence. It was said that the two offences being fundamentally distinct in nature, could be separately taken cognizance of. That they are distinct in character is patent from the fact that the former is made noncompoundable, while the latter remains compoundable; in one for the initiation of the proceedings the legislature requires the sanction of the court under section 195, Criminal Procedure Code, while in the other, cognizance can be taken of the offence on the complaint of the person defamed. It is pointed out in the Full Bench case that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very materially to the provisions of sections 195 to 199 of the Code of Criminal Procedure. The decision of the Calcutta case has been quoted with approval by this Court in Basir-ulHaq vs. State of W.B.(1) in which it was held that if the allegations made in a false report disclose two distinct offences, one against a public servant and the other against a private individual, the latter is not debarred by the provisions of s. 195, Criminal Procedure Code, from seeking redress for the offence committed against him.

6. In the present case, therefore, we are of the opinion that S. 195, Criminal Procedure Code does not bar the trial of the appellants for the distinct offence under section 353 of the Indian Penal Code, though it is practically based on the same facts as for the prosecution under section 186, Indian Penal Code.

7. ..Two distinct offences having been committed in the same transaction, one an offence of misappropriation under s. 409 and the other an offence under 477-A which required the sanction of the Governor, the circumstance that cognizance could not be taken of the latter offence without such consent was not considered by the Federal Court as a bar to the trial of the appellant with respect to the offence under s. 409.

8. We have expressed the view that s. 195, Cr.P.C. not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but we must point out that the provisions of S. 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in s. 195, Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of s. 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it.

11 Thus, the Supreme Court has approved the observation made in the case of Basir-Ul Huq (supra). Reliance is also placed on the decision of the Full Bench of the Calcutta

High Court in the case of Satis Chandra Chakravarti (supra). The Full Bench of Calcutta High Court has held that where the maker of a single statement is guilty of two distinct offences, which are fundamentally distinct in nature, could be separately taken cognizance of.

12 In the case of State of Karnataka vs Hemareddy @ Vemareddy and Anr., 1981 (2) S.C.C. 185, (The relevant sections considered are section 467 of the IPC and section 195(1)(b) of the Cr.P.C.), it is held thus:

> 8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under s.195(1)(b) of the Code of Criminal Procedure 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 s.195(1)(b) of the Code of Criminal Procedure should be upheld.

13 Again in the case of State of U.P. vs. Suresh Chandra Srivastava and Ors., AIR 1984 S.C. 1108, (The relevant sections considered are sections 467, 471, and 120B of the IPC). The Apex Court has observed thus:

> 6. In these circumstances, therefore, it is not necessary for us to go into the broader question as to whether if offences under ss. 467, 471 and 120B, I.P.C. are committed, the complaint could proceed or not. The law is now well- settled that where an accused commits some offences which are separate and distinct from those contained in section 195, and section 195 will affect only, the offences mentioned therein unless such offences form an integral part so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of s. 195 of the Code.

14 In the case of Pankaj Aggarwal vs. State of Delhi, JT 2001 (5) S.C. 233 (The relevant sections considered are sections 186, 332, and 353 of the IPC) while referring to the decision of Durgacharan Naik (supra) has observed thus:

> 3. But in view of the judgement of this Court in AIR 1966 SC 1775 where the court has anlaysed the provisions of section 353,Indian Penal Code and 186, Indian Penal Code and held that two are distinct offences and quality of the offence is also different, we are of the opinion that Judgement of the Punjab High Court is not correct in law and has taken a view contrary to the law laid down by this Court. What has been stated earlier in the aforesaid case in relation to the provisions of Section 353, Indian Penal Code would equally apply to the provisions of Section 332 of the Indian Penal Code. This being the position, we are unable to accept the contention of Mr.Jain that the provisions of Section 195(a)(i) bars taking cognizance of section 332/34, Indian Penal Code. We, however, agree with Mr.Jain that the order taking cognizance of Section 186 of the IPC is bad in law and attracts the mischief of Section 195. In the aforesaid premises, we quash the criminal proceedings so far as the charge under Section 186 IPC is concerned and direct

that the criminal proceedings would continue so far as the charge under Section 332/34, IPC is concerned.

15 I may refer to the two decisions of the coordinate bench of this Court on the same issue. Judgement dated 13.04.2017 rendered in Criminal Misc. Application No.24632 of 2015 (Govardhankumar Thakoredas Asrani vs State of Gujarat), and judgement dated 03.11.2017 in Special Criminal Application No.7913 of 2017 (Zaid Bhagat s/o Altaf vs State of Gujarat).

a) In the judgement in the case of Govardhankumar (supra), (considered sections 141, 143, 186, 332, 253, 504, 506(2) of the IPC) this court, after survey of various judgements of the Supreme Court, has observed thus:

39. It is true that section 195 of the Code does not bar the trial of an accused for a distinct offence disclosed by the same set of facts and is not so stated therein. Section 195 also does not provide further that if in the course of the commission of that offence, the other distinct offences are committed, the court concerned is debarred from taking cognizance in respect of those offences as well. However, if the perusal of the first information report and other papers of the chargesheet makes it clear that the offence under sections 186 or 188 of the IPC, as the case may be, is closely interconnected with the other distinct offences and cannot be split up, then, in such circumstances, the bar of section 195 of the Cr.P.C. will apply to such other distinct offences also.

40. xxx xxx xxx

41. Thus, what is discernible from the decisions referred to above of the Supreme Court is that if in truth and substance, an offence falls in the category of sections in section 195 of the Cr.P.C, it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences. This would depend on the facts of each case. It cannot be laid as a straitjacket formula that the Court cannot undertake the exercise of splitting up. It would depend upon the nature of the allegations and the materials on record.

16 In the judgement in the case of Zaid Bhagat (supra) (considered sections 186, 143, 147, 149, 332, 353 and 504 of the IPC and section 195(1)(a) of the Cr.P.C., while distinguishing the aforesaid judgement in the case of Govardhankumar (supra), has held thus:

11. Applying the principles of law explained by me in the above referred judgment, there should not be any difficulty on my part in rejecting this writ application. However, there are one or two contentions canvassed by Mr. Syed, the learned counsel, which I would like to deal with, more particularly, the distinction drawn by Mr. Syed of Section 195 (1)(a) with Section 195(1)(b) of the Cr.P.C.

14. The plain reading of the provisions referred to above will show that no Court can take cognizance of an offence punishable under Section 186 of the I.P.C., except upon a complaint in writing of the public servant concerned or of some other public

servant to whom he is administratively subordinate. The opening words of the Section are No Court shall take cognizance, and consequently, the bar created by the provisions is against taking of cognizance by the Court. There is no bar against the registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of the investigation, as contemplated by Section 173 of the Cr.P.C.

21. Thus, the only distinction between Section 195(1) (a) and Section 195(1)(b) of the Cr.P.C. is with regard to Section 340 of the Cr.P.C. The jurisdiction to make a complaint under Subsection (1) of Section 340 of the Cr.P.C. is limited to such cases, as are provided in Subsection (1) of clause (b) of Section 195 of the Cr.P.C. only. Section 340 of the Cr.P.C. does not authorise a complaint with reference to an offence described in Section 195(1)(a) of the Cr.P.C.

23. Mr. Syed, the learned counsel, to salvage the situation, in the last, submitted that the investigation will be an exercise in futility, because ultimately, the Court will not be in a position to take cognizance on the police report. To make good his submission, he has relied upon the observations made by this Court in para 56 of the judgment rendered in the case of Govardhankumar Asrani(supra) referred to above. In Paragraph No. 56 of the judgment in the case of Govardhankumar Asrani (supra), I made myself very clear that as an exception and without citing as a precedent and in the peculiar facts of the case, the relief was being granted at the stage of investigation.

17 Thus, the view expressed by the Full Bench of the Calcutta High Court in the case of Satis Chandra Chakravarti (supra) is approved by the Apex Court in the case of Basir-ul Haq (supra), which is subsequently followed in all the judgments. The Full Bench has specifically bifurcated the offence viz. offence against the public justice and where the personal element is largely involved. It is further observed that wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the Court concerned. It is also observed if the two offences are fundamentally distinct in nature, the same could be separately taken cognizance of. It is pointed out in the Full Bench case that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because to hold otherwise would amount to legislating and adding very material to the provisions of sections 195 to 199 of the Cr.P.C. Thus, if the distinct offences for which no complaint is required are barred by the provisions of section 195 of the Cr.P.C. then same would amount to legislating and adding the same to the provisions of section 195 of the Cr.P.C. In the case of Pankaj Aggarwal (supra), the Supreme Court has quashed the charge under Section 186 of the IPC but has allowed the criminal proceedings to continue so far as the charge under Section 332/34 of the IPC is concerned.

18 The conspectus of the afore-mentioned judgements establishes the following parameters:

(a) There is no bar of taking cognizance under section 195(1)(a) of the Cr.P.C. if the offences are separate and distinct having different ingredients and characteristics from those contained in section 195(1)(a) of the Cr.P.C.;

(b) Bar of taking cognizance under section 195 of the Cr.P.C. will apply if the offences cannot be segregated and they form integral part;

(c) The offences must be committed as a part of the same transaction;

(d) Such offences can be segregated on the basis of element of public justice (viz. offences occurring in Chapter-X of the Cr.P.C.) and personal element (viz offences under ChapterXVI of the Cr.P.C.) though committed as a part of the same transaction.If the personal element largely predominates, such offence can be taken cognizance without a written complaint; and

(e) Change of label or garb of an offence or misdescribing an offence will create a bar of section 195 of the Cr.P.C.

The coordinate bench of this Court in the case of Zaid Bhagar (supra) has observed that the common thread of the aforesaid proposition of law is the expression taking cognizance under section 195 of the Cr.P.C. since the opening words of the section are No Court shall take cognizance. Thus, there is no bar against the registration of the criminal case or investigation by the police or submission of a report by the police under section 173 of the Cr.P.C. I would like to further supplement the said view by observing that if after the investigation, it is found that a charge sheet is required to be filed for the distinct offences of the IPC other than which are barred under section 195 of the Cr.P.C., then the concerned Court can take cognizance of such distinct offences of the IPC. The plain and simple reading of the opening recital of section 195 of the Cr.P.C. bars taking of cognizance of the offences of the IPC mentioned therein except on the complaint in writing to the Court. The offences can be said to be distinct even if they form part of the same transaction and if their characteristics and ingredients are different. Thus, the offences which do not require any complaint as stipulated under section 195 of the Cr.P.C. will fall under the category of distinct offences if their characteristics and the ingredients are different though they form part of the same transaction. However, this Court while exercising the inherent powers under section 482 of the Cr.P.C. can quash the offence which is exclusively barred and stipulated under the provisions of section 195 of the Cr.P.C.

19 In the present case the F.I.R. has been registered for the offences punishable under sections 186, 189 and 506(1) of the IPC. Thus, the offence under section 186 of the IPC (obstructing public servant in discharge of public functions) would attract the mischief of section 195(1)(a) of the Cr.P.C. Though, the offence of section 189 of the IPC, which postulates punishment for threat of injury to public servant is not prescribed in section 195(1)(a) of the Cr.P.C., the cognizance of the same cannot be taken without a written complaint since in the present case it forms an integral part of the same transaction to the offence under section 186 of the IPC and such offence cannot be segregated for the satisfaction of the provisions of section 195(a)(1) of the Cr.P.C. It appears that the

offence under section 189 of the IPC is registered merely to change the label or garb of an offence under section 186 of the IPC. However, in the present case even if the offence punishable under section 189 of the IPC is maintained, the allegations made in the F.I.R. will not constitute the offence. Section 189 of the IPC reads as under: SECTION 189 : Threat of injury to public servant

20 Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

21 Thus, the in order to constitute the offence punishable under the aforesaid section, the necessary ingredient is threat of injury. Section 44 of the IPC defines injury which denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. In order to constitute any threat of injury there must be an intention to inflict injury, loss or pain. In the present case, the contents of the F.I.R. reveal that the petitioner had uttered the words I will see you all and will approach the High Court against them. Thus, assuming that the petitioner has occurred the aforesaid words, the same will not satisfy the ingredients of the expression threat of injury, since merely during an altercation, if he utters such words will not amount to an intention to inflict injury, loss or pain. Unquestionably, mere threat to approach the High Court does not denote injury. Lastly, examining the provisions of section 506(1) of the IPC, which stipulates punishment for criminal intimidation, it can be safely presumed that in the wake of the present facts, the ingredients of section 503 of the IPC, which defines criminal intimidation are also not satisfied. To satisfy the ingredients of Section 503 of the IPC, the threat must cause alarm in the mind of the victim which causes a person to do any act which he was not legally bound to do or to omit to do any act which he was legally entitled to do. No such feature is emerging in the present case. Hence, the F.I.R. registered for the offence punishable under sections 186, 189 and 506(1) of the IPC against the petitioner cannot be allowed to be sustained in view of the aforenoted observations and analysis.

22 Resultantly, the present petition stands allowed. The F.I.R. being C.R. No.II-3036 of 2017 registered with Prantj Police Station, District Sabarkantha as well as the consequential proceedings arising out of the impugned F.I.R. are hereby quashed and set aside. RULE is made absolute.