

## **Sumer Goshain And Ors. vs State on 2 August, 1951**

**Equivalent citations: AIR1952ALL560, AIR 1952 ALLAHABAD 560**

### **ORDER**

Desai, J.

1. The applicants convicted under Section 188, Penal Code for disobeying an order passed by a Magistrate under Section 145 (6), challenge the conviction on the ground that no complaint was made by the Magistrate concerned for their prosecution. It is true that the Magistrate whose order under Section 145 (6) was disobeyed by the applicants has made no complaint of the offence against them. The trial Court took cognizance of the offence on a report of the police to the effect that the applicants had committed the offence. The offence of Section 188, Penal Code has been made cognizable under Home Department Notification No, 1609/ VIII B.U.O. dated 18-1-1949. So the police investigated into the offence committed by the applicants and being satisfied that they had committed it made a report direct to the trial Court and the trial Court took cognizance.
2. Section 190 of the Coda which lays down that a Magistrate can take cognizance of an offence on a complaint or a report of a police officer, or own information is subject to the provisions of Section 195(1)(a) which lays down that he cannot take cognizance of an offence under Section 188, Penal Code, except on the complaint in writing of the public servant concerned. These provisions about the cognizance to be taken by a Magistrate have nothing to do with the question whether the offenders are cognizable or not. The only incidents of cognizable offences are that the police can arrest without a warrant and can investigate without an order of a Magistrate. So when the offence of Section 188, Penal Code was made cognizable by Government, it only meant that the police could arrest a person alleged to guilty of that offence without a warrant and make an investigation into the offence. It certainly did not have any other effect; it did not affect the provisions of Section 195 (1) (a), Criminal P. C. which remain intact. Whether the offence is cognizable or not, no Court can take cognizance of it except on the complaint of the public servant concerned. The trial Court had, therefore, no jurisdiction to take cognizance of the offence committed by the applicants on the report of the police. When the police upon investigation found that the applicants bad committed the offence they should have reported the matter to the Magistrate whose order had been disobeyed and asked him to make the complaint.
3. As the trial Court had no jurisdiction to take cognizance of this offence, the trial is invalid. I, therefore, allow this application, set aside the applicants' conviction and sentences and acquit them. If they have paid the fine it should be refunded to them.