

Order Below Exhibit-1

1. This case is filed under section 185 of The Motor Vehicles Act (Here in after referred as The Act). The Act has been enacted for regulating road accidents. Investigating Officer [In short 'I.O'] has filed the Chargesheet against the accused **u/S. 185 of the Motor Vehicles Act** on the basis of First Information Report. An allegation against an accused is such that, the accused is driving the vehicle after having consumed alcohol. Under section 185 of the act, the punishment prescribed is, for the first offence with imprisonment for a term which may extend to six months, or with fine of ten thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two year, or with fine of fifteen thousand rupees, or with both.
 2. This Court has also given ample opportunity to the Ld.APP for the State.
 - 1.On perusal of papers, the question arises for my consideration is whether this Court is empowered to take cognizance of alleged offence as the authorized officer has not filed complaint ?
 3. There is no specific provision provided for the trial in the Motor Vehicles Act. Therefore, in that circumstances, sec.4 of the code of Criminal Procedure,1973 is applicable and it is clear from section-4 of the code, whenever no specific provision provided in special or local act, the investigation, trial and inquiry will be conducted according to provisions of Cr.P.C. As per schedule-II of Cr.P.C, an offence punishable with imprisonment for less than 3 years or with fine only, is Non cognizable offence. Hence, the present offence could be non-cognizable as it provides punishment less than 3 years in all circumstances.
- However, according to section 202 of the M.V.Act, A police officer in uniform may arrest without warrant any person who in his presence commits an offence punishable under section 184 or section 185 or section 197: Provided that any person so arrested in connection with an offence punishable under section 185 shall, within two hours of his arrest, be subjected to a medical examination referred to in sections 203 and 204 by a registered medical practitioner failing which he shall be released from custody. 1[(2) A police officer in uniform may arrest without warrant any person, who has committed an offence under this Act, if such person refuses to give his name and address.]
4. Now, the another question arises that only the fact that a police officer having power to arrest an accused under section 202 of the act turns the non-cognizable case into cognizable case?
 5. Regarding the above issue, this court has considered various judgments of Hon'ble Supreme Court and Hon'ble High courts including our mother High Court.
 - (1) In the case of **State of Gujarat v. Bhimji Manji and Ors.** reported in 1968 Cr.LJ.156, Divisional Bench of Hon'ble High Court while interpreting section 4 of The Code of Criminal Procedure, observed in para-3 that, " it appears that even when an investigation is to be made and an enquiry and a trial have to be held for offences against other laws, the Courts have to look to the provisions of the Code, unless it appears that any special enactment in force at the material time makes a special provision in the matter of dealing with such offences."

Further The Hon'ble High Court of Gujarat held in para 4 as under:

4. ... Rule 152 of the Rules, which corresponds to rule 128 of the Defence of India Rules, 1939, deals with the general powers of any police officer to arrest without a warrant. It reads as under:

"152. General powers to arrest without warrant.-Any police officer may arrest without warrant any person who is reasonably suspected of having committed or of committing or of being about to commit a contravention of Rules 13, 19 26, 31, 57, 64, 65, 66, 78, 80, 85, 88, 118, 121, 122, 129, 131, 134, 140, 141 or 142 or of any order or direction made or given under any of the said rules." It

is only in respect of the stated rules that a provision is made for the arrest of the offenders without a warrant. The power is given to any police officer. A close analysis or examination of the relevant rules referred to in Rule 152 will go to show that save and except for rule 26 of the Rules, all other rules referred to therein are punishable with imprisonment of less than three years. Rules 13, 19, 31, 57, 64, 65, 66, 78, 80, 85, 118, 121, 122, 131, and 141 are all rules which provide that the contravention of any order or direction made or given thereunder shall be punishable with imprisonment for a term which may extend to six months or with fine or with both. It appears from the scheme of the Rules that a sub-rule of each relevant rule confers a power upon the Government or the appropriate authority to make a particular order or give a particular direction or injunction and another sub-rule of the same rule provides for the punishment. These rules, which have been examined by us, show that the contravention of the order, direction or injunction made or given under the said rules is made punishable for a lesser term of imprisonment and these offences appear relatively to be minor offences. Sub-rule (3) of rule 88 of the Rules makes the contravention of the order made under sub-rule (1) punishable with imprisonment which may extend to one year and also to a fine. Rules 129, 140 and 142 prescribe the maximum imprisonment awardable for the contravention of the relevant orders made under the rules as two years imprisonment. Sub-rule (2) of rule 26, which is one of the rules for which special provision is made in Rule 152, provides that the contravention of any order made under sub-rule (1) shall be punishable with imprisonment for a term which may extend to five years or fine or with both. Rule 26 is the only rule, the contravention whereof is made punishable for a higher term of imprisonment. It will thus appear that all the rules mentioned in rule 152 except rule 26 have relation relatively to minor offences. The said offences fall within the category of non-cognizable offences as defined in clause (n) of sub-sec. (1) of sec. 4 of the Code read with relevant entry in Schedule II thereof. The part of Schedule II of the Code which has relation to offences against other laws provides that if the offence is punishable with imprisonment for one year and upwards, but less than three years, the police shall not arrest without a warrant. The rules referred to in rule 152 except rule 26 thus relate to non-cognizable offences. An examination of some other rules contained in the Rules will reveal that contravention of orders made under rules 6, 8, 10, 12, with 21 and 22 will constitute relatively major offences, made punishable With imprisonment for a term which may extend to three years or with fine or with both. These are not the rules for which any provision is made in rule 152. made is both. These are not the rules for which any provision in made in rule 152. Rules 14, 15, 25, 28, 33, 38 and 39 make provision for punishment Contravention of the sub-rule embodied in the said rules. The punishment provided for the contravention of any order made under the relevant sub-rule is imprisonment which may extend to five years or with fine or with both. Then are the rules 9, 11 and 32 which provide for more serious offences and the punishment provided is imprisonment for a term which may extend to seven years. Rule 152 which confers general power on a police officer to arrest, without warrant, persons Contravening the stated rules or any order or direction made or given under the said rules does not include these rules which provide for higher punishment. It will thus appear that rule 152 has been enacted tor a special purpose, viz., to invest police officers with powers to arrest without a warrant any person who is reasonably suspected of having committed or of being about to commit a contravention of the rules specifically mentioned therein, which appear to provide for relatively minor offences, punishable with an imprisonment for less than three years and this appears to be with a view to clothe police officers with larger powers to meet emergent Conditions. Thus, it cannot be said that rule 152 is exhaustive of the powers of police officers to arrest persons without warrant in respect of all offences considered as cognizable offences as defined in the Code. To say so would mean that major offences under the various Rules aforesaid, the contravention whereof is made punishable with higher terms of imprisonment under the minor ones as Rules, will have to be treated as non-cognizable offences and In our view, Cognizable offences. This would create an anomalous position. such could not have been the legislative intent.

(2) Keshav Lal Thakur V/s. State of Bihar (1996 (11) SCC 557).

The offence under Section 31 of the Representation of the People Act, 1950 is non-cognizable and therefore the police could not have registered a case for such an offence under Section 154 Criminal Procedure Code. Of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155(2) Criminal Procedure Code but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the Explanation to Section 2(d) Criminal Procedure Code, which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a complaint of the police officer concerned, but that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence unlike the present one but ultimately finds that only a non-cognizable offence has been made out.

(3) Delhi High Court in Narain Singh V/s. The State (1986 (1) Crimes 535 at page 537)

Hon'ble Delhi High Court held that, an offence under any law other than the Indian Penal Code would be non-cognizable in character if it is punishable with imprisonment for less than three years or with fine only. Offences under Secs. 184 and 185 of the Act must come under the third category of cases mentioned in Part II of the First Schedule of the Code, i.e. punishable with imprisonment for less than three years and hence non-cognizable and bailable in character.

(4) Mehaboob Koya Moideen Versus State, 2011 (2) KerLJ 574 ISSUE

Whether the Magistrate could take cognizance of offences punishable under Secs. 184 and 185 of the Act on a police report following an investigation conducted in violation of Sec. 155(2) of the Code- Sub-sec.(1) of Sec. 155 of the Code deals with information regarding commission of a non-cognizable offence given to an officer in-charge of a police station. Sub-sec. (2) says that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to or commit for trial such case. An investigation conducted in violation of the try said provision stamps such investigation with illegality ?

(Para 11.) The above discussion leads me to the conclusion that cognizance taken by the learned Magistrate of offences punishable under Secs. 184 and 185 of the Code on a charge sheet submitted by the police officer after an investigation in violation of Sec. 155(2) of the Code is illegal and for reasons I have stated, the said charge sheet cannot also be deemed to be a complaint as defined under Sec. 2(d) of the Code. Cognizance taken being illegal is liable to be quashed.

(Para 12.) But that cannot be the end of the matter so far as this case is concerned. Learned Magistrate has to return the charge sheet and connected records. The police officer, as indicated in paragraph 10 above may subject to the relevant laws seek permission of the learned Magistrate to conduct investigation under Sec. 155(2) of the Code and on receiving such permission register a case, conduct investigation as provided under sub-sec. (3) of Sec. 155 and submit a final report as provided under Sec. 173(2) of the Code or if he is so advised, file a complaint on his own as provided under Sec. 190(1)(a) and 200 of the Code in which case it is within the power of the Magistrate to order an investigation and call for a report under Sec. 202 of the Code. This would be subject to the provisions of the law relating to limitation, etc. The Complaint would proceed as if it is a complaint filed by a public servant acting or purporting to act in the discharge of his official duty.

(6) Rishbud and Anr. V/s. State of Delhi (AIR 1955 SC 196) and Kunhumammed V/s. State of Kerala (1981 KLT 50): (1981 Cri LJ 356 (Ker)). In the present case, the police officer notwithstanding that offences under Secs. 184 and 185 of the Act are non-cognizable in character has proceeded to register a case as if the said offences are cognizable in character. Recording of firstPage 5 of 5 information relating to a cognizable offence is regulated by Sec. 154 of the Code. The expression 'First Information Report' must be understood to mean an information recorded under Sec. 154 of the Code and the condition which is a

sine qua non for recording First Information is that the information received must relate to the commission of a cognizable offence. In the present case the report of the police officer only disclosed a non-cognizable offence and hence a First Information Report could not have been registered under Sec.154 of the Code. Instead, after recording substance of the non- cognizable offence in the book maintained in the police station for the purpose, the police officer should have submitted a report to the Magistrate having power to try the of the case and obtained an order for investigation of the case. On receiving such order, such police officer could by virtue of sub-sec.(3) the Sec.155 of the Code exercise the same powers in respect of investigation (except the power to arrest without warrant) as an officer-in-charge of a police station may exercise in a cognizable case. Thereon he could register a First Information Report under Sec.154 of the Code and investigate the case as in a case involving cognizable offence and submit a final report under Sec.173(2) of the Code in respect of the non-cognizable offences. Thus, the police officer in this case could have registered a First Information Report and investigated the case relating to the offences punishable under Secs. 184 and/or 185 of the Act only with the order of a Magistrate having power to try the case. Since no such order is obtained, registered of the First Information Report, conducting the investigation, filing of charge-sheet and taking cognizable by the learned Magistrate (of offences under Secs.184 and 185 of the Act) are illegal.

(7) It is established that in cognizable case police has power to arrest and investigate without the permission of concerned magistrate and subsequently police filed charge-sheet under section 173 of Cr.P.C. but if power to arrest under different circumstances is given under any law then as per above discussion it does not mean that police automatically get the power to investigate the offence without prior permission of the concerned Magistrate. In the present case that there is no confusion in the mind of a Investigating Officer that he is going to investigate only offence of section 185 M.V.Act and such investigation is carried out by the police in respect of Non-cognizable offence without the prior permission of concerned Magistrate under section 155(2) of Criminal Procedure Code, which is illegally and bad in law.

(8) In the present case also, police has investigated the offence without the permission of this Court. It is clear from record that no permission is sought for by the police for the investigation. Therefore, charge sheet filed by the police against accused is illegal in the eye of law. Considering the above situation, when the charge sheet is illegal in the eye of law, in that circumstances “principle of nullity” will apply and all the subsequent proceedings are also become illegal in view of section 461 Crpc. Upon discussion of aforesaid provision of law and Judgment Pronounced by the Hon’ble Supreme Court in Keshav Lal (Supra) and various Hon’ble High Courts, it is clear that if police investigated the non cognizable offence without the prior permission of the concerned Magistrate and subsequently filed the charge sheet then as per law it is not proper for the Court to take cognizance or to conduct the trial on that charge-sheet or to treat that charge sheet as complaint. So, this Court passes the following final order in the interest of Justice.

FINAL ORDER

The Proceeding against the accused person u/s 185 of M.V. Act is hereby dropped with liberty to prosecution to take such steps as deems fit in accordance with law. Police to take necessary action for disposal of muddamal as per law/ prior order of release muddamal of court if any is hereby made permanent.

Pronounced in a special sitting of Magistrate on the 26 th day of june 2022.

Date: - 26/06/2022

Place: Surat

Shraddha N. Falki
8th Addl. & Civil Judge & JMFC, Surat.
UIC: GJ01579