

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, DAHODOrder Below Ex-1

**DAHOD TOWN B DIVI. Police Station II CR No-11821053251122/2025, M.V.Act-185 & Prohi Act-66(1)(b) Accused Name-BHARATBHAI HIRABHAI BHURIYA**

***This Order has been passed in Two parts wherein Part A will denote regarding Sec 185 and In part B, I will deliberate regarding New Prohi Act sec***  
**Part A- DELIBRATION ON SEC 185**

1. This litigation is filed u/s 185 of MVAct. Ld App is heard vehemently in this regard. The core Question for determination for this Court is whether this Court can take cognizance in such offence? Whether this offense is Non- Cognizable? Answer lies negative by discussion as follows:
2. S 510 of IPC 1860 postulates that the person who do misconduct in public place in drunken state in intoxication shall be punished simple imp of 24 hours. This Offense was also Non-cognizable.
3. Now we shall jump to S 185 which envisaged that the offense by driving vehicle by drunken person. The Offences under M.V Act 184 & 185 are non –cognizable offences, Hence police cannot file chargesheet without permission of the Court as per bar of section 155(2) of Cr.P.C. If cognizance taken by the learned Magistrate of offences punishable under **Sec. 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.** 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.** I relied upon following authorities which are shared with Ld App but no contrary legal view has been reported to this Court.

**JUDGMENTS**

- **Rani Shashank Doshi v. State of Maharashtra (2014) 1 BOMCR(CRI) 339**  
It has been held that....

***Motor tfehicles Act (59 of 1988) S. 185 as amended by Amendment Act (54 of 1994) - Drunken driving -Offence under S. 185 — Is not cognizable — Merely because power to arrest wit hout warrant is conferred in police officer in uniform it would not mean that the offence is cognizable.***

***Merely because the power to arrest without warrant is conferred in a police officer in uniform, it does not mean that the offence is cognizable. Even if a person is to be subjected to the tests breath analysis, the police officer must have a reasonable cause to suspect him of having committed an offence punishable under Section 185. Therefore, if there is a reasonable cause to suspect a person having committed an offence punishable under Section 185, that he can be subjected to a Breath Test and by calling upon him or requiring him to subject himself to such test, is not necessarily arrest. He could be arrested provided a Breath Test carried out on him indicating presence of alcohol in his blood. He cannot be arrested if he is at a***

*hospital as an indoor patient. If the person concerned refuses to provide a specimen of breath for a Breath Test or fails to do so and a police officer has a reasonable cause to suspect him of having alcohol in his blood that he may arrest that person except while that person is in hospital as a indoor patient. Even after his arrest he shall while at police station be given an opportunity to provide a specimen of breath for a Breath Test. Therefore, with all this it is not as if the offence can be said to be cognizable. Additionally also because of the extent of punishment, namely, imprisonment for less than two years that a conclusion can safely be reached that an offence punishable under Section 185 of the Mtf Act is not cognizable. (Paras24,45)*

- **Sandeep Indravadan Sagar v. State of Maharashtra 2013 CRI. L. J. 1147**

*Criminal P.C S.154, S.157— @page-CriLJ1148F.I.R. - Receipt and recording of - Is not a condition precedent for investigation into a cognizable offence. The investigation of, or into a cognizable offence must be preceded by registration of the First Information Report, is not a sound proposition of law. It is true that ordinarily, it would only be on the basis of the First Information Report that the police machinery would be made aware of the offence and, therefore, ordinarily there would be a First Information Report recorded in accordance with the provisions of Section 154 of the Code, before the investigation into a cognizable offence or case commences. However, to suggest that the power to investigate flows from the registration of the First Information Report would be totally incorrect. The receipt and recording of First Information Report is not a condition precedent for investigation into a cognizable offence. It is clear from the provisions of Section 157 of the Code, which speaks of the procedure for investigation, that the investigation can commence, if the officer in charge of a police station has reason to suspect the commission of a cognizable offence; and this reason can be formed from the information received or otherwise. The provision for giving information, therefore, is not to provide the police with the power of investigation, but to enable an unembellished version of the incident to be given at the earliest ( opportunity, so that the prosecution case at the trial may be tested.Pr 10)*

*Criminal P.C. (2 of 1974) , S.2(c)— Motor vehicles Act (59 of 1988) , S.202, S.185 Driving by*

**drunken person - Offence of - Is non-cognizable - Limited power to arrest such person without warrant given to police officer in uniform did not make offence under S. 185 cognizable offence . Criminal M. C. NO. 702 of 2011, D/- 30-3-2011 (Kerala H.C.), Followed.(Para20) (Para 20) Criminal**

*P.C. (2 of 1974) , S.155(2)— Motor vehicles Act (59 of 1988) , S.185— Driving by drunken person - Offence of - Investigation of offence punishable under S. 185 as provided in Motor vehicles Act (1988) would prevail over provisions of Criminal P. C. which prohibit investigation into a non-cognizable offence without order of Magistrate - Subjecting such person to Breath analysis test and thus collecting evidence without order of Magistrate, permissible. Indeed the holding of Breath analysis Test and Laboratory Test, is a process of collection of evidence. It has to be accepted that it is a part of investigation. However, the contention that 'if the offence is held to be non-cognizable then, investigation into it*

*cannot be carried out without an order from the Magistrate, in view of the bar created by sub-section (2) of Section 155 of the Criminal Procedure Code', is not acceptable. It has already been noticed that the procedure with respect to investigation of offences, as laid down in the Criminal Procedure Code, is applicable to the offences punishable even under a special law (like the Motor Vehicles Act) but, subject to any special procedure prescribed there under (or any other law for the time being in force) for the investigation or trial of such offences. A reading of Sections 4 and 5 of the Code, leaves no manner of doubt that where a different procedure than one prescribed in the Code, is laid down for the investigation, inquiry or trial of any offences under any law other than the Penal Code, such special procedure shall prevail over the provisions in the Code, with respect to the investigation of offences. Thus, the provisions in the M. V. Act regarding the investigation of the offences punishable under Section 185 of the M. V. Act, will prevail over the provisions in the Code, which prohibit investigation into a non-cognizable offence without an order of a Magistrate. There is, therefore, no illegality committed by the police in subjecting the persons apprehended on the allegation of having committed the offence punishable under Section 185 of the M. V. Act to Breath analysis Test, and in having collected 'evidence' of the offences.*

- **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.*

- **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.*

- **Mehaboob Koya Moideen Versus State, 2011 (2) KerLJ 574**

*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 try or commit for trial such case. An investigation conducted in violation of the 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.*

- **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 first 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 case and obtained an order for investigation of the case. On receiving such order, such police officer could by virtue of sub-sec.(3) of 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, registering of the First Information*

*Report, conducting the investigation, filing of charge- sheet and taking cognizance by the learned Magistrate (of offences under Secs. 184 and 185 of the Act) are illegal.*

1. Due to aforesaid discussion, I am not suppose to take cognizance in chargesheet in Non-Cognizable Offence of Sec 185 of MV Act.

## **PART B DELIBERATION OF SEC 66b & 85**

4. આ કામે રેકર્ડ જોતાં દારુ પીને વાહન ચલાવવાનો ગુનો છે. જેથી કલમ ૮૫ નવી સુધારેલી નીચે મુજબ છે.

**SEC 85** (1) Whoever, in any street, thorough fare, public place, in any place to which the public have or are permitted to have access, is drunk and creates nuisance, takes up a quarrel with any person, uses foul or abusive language, indulges in fight with others, misbehaves with any women or behaves obscenely shall on conviction, be punished with imprisonment for a term which may extend to 3 years but which shall not be less than one year with fine.

5. આથી ઉક્ત કલમ માં ૮૫ મુજબફકત દારુ પીવું નહીં પણ દારુ પીને ન્યુસંસ કરવું ગુનો છે. જે સબબ ફરીયાદ મા ફકત દારુ પીને ગાડી ચલાવવા સબબ નો ગુનો છે. જેથી કલમ ૮૫ માટે ચાર્જ શ્રેમ કરી શકાય તેટલો પુરાવો નથી. **આ કામે નામદાર સુપ્રીમ કોર્ટના જજમેન્ટ**

**MINUKUMARI V/s. STATE OF BIHAR<sup>1</sup>** ના જજમેન્ટમાં ઠરાવેલ સિધ્ધાંત મુજબ જ્યારે કોઈ નવો ચાર્જ આવે ત્યારે મેજીસ્ટ્રેટ પાસે શું સત્તાઓ રહેલ છે તે નીચે મુજબ ઠરાવેલ છે. 11. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise : The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) **may disagree with report and drop the proceeding.** આથી પ્રોહીબીશન એક્ટ નવા કલમ ૮૫ પુરતાં આરોપી ને ચાર્જ ડ્રોપ કરવાનો હુકમ કરવામાં આવે છે.

6. હવે બાકી કલમ ગુનો મહદંશે કલમ ૬૬બી પ્રોહી એક્ટ નો નવો છે જેમાં ગુનો કોગ્નીઝેબલ બનાવવાની કલમ દુર કરવામાં આવેલ છે. આથી તે કલમ પુરતી ડીસ્ચાર્જ સબબ પડતા મુકવાનું થાય છે. આથી સમગ્ર ચર્ચા કલમ ૬૬બી પુરતી કરેલ છે. સેટલ્ડ લો મુજબ જો ગુનો નોન કોગ્નીઝેબલ હોય તો તેમાં કોગ્નીઝેન્સ કોર્ટ ધ્વારા કલમ ૧૫૫(૨) નાં બાધ ને લીધે લઈ શકાય નહીં.
7. ગુજરાત પ્રોહીબીશન એક્ટ ની કલમ ૬૬(૧)બી કોગ્નીઝેબલ કે નોન કોગ્નીઝેબલ
8. બોમ્બે (ગુજરાત) પ્રોહીબીશન એક્ટ ૧૯૪૮ ની કલમ ૬૬(૧)બી અગાઉ ૨૦૧૭ નાં સુધારા અગાઉ દારુ પીવા સબબ નો ગુનો કોગ્નીઝેબલ હતો. જે નીચે મુજબ છે.

### **S.66 Penalty for illegal cultivation and collection of hemp and other matter**

[(1)] Whoever in contravention of the provisions of this Act, or of any rule regulation or order made, or of any licence, permit, pass or authorization issued, thereunder— 2 [\*\*\*\*\*]

9. **(b) consumes, uses, possesses or transports (strike through Words amended after 2016 amendment w.e.f 19/12/2016)** any intoxicant 3 [(other than opium,)] or hemp, (c) taps or permits to be tapped any toddy producing tree, (d) draws or permits to be drawn toddy from any tree, 4 [(e) enters the territory of the State in an intoxicated condition or under the influence of an intoxicant (other than opium ) or hemp, after having consumed such intoxicant or hemp at any place outside the State,] shall, on conviction, be punished,— (i) **for a first offence**, with imprisonment for a term which **may extend to six months and with fine which may extend to one thousand rupees**; 5 [\*\*\*\*\*] (ii) for a second offence, with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees; 6 [\*\*\*\*\*] (iii) for a third or subsequent offences, with imprisonment for a term which may extend to two years and with fine which may extend to two

<sup>1</sup> 2006(2) CRIME SC 130

thousand rupees; 7 [ \* \* \* \* ] 8 [ (2) Subject to the provisions of sub-section (3), where in any trial of an offence under clause (b) of sub-section (1) for the consumption of an intoxicant 9 [or in any trial of an offence under clause (e) of sub-section (1) for entry in the territory of the State after consumption of an intoxicant or hemp at any place outside the State], it is alleged that the accused person consumed liquor, and it is proved that the concentration of alcohol in the blood of the accused person is 10[ not less than 0.05 per cent. weight in volume], then the burden of proving that 1 [ the liquor consumed was a medicinal preparation consumed in quantity not in excess of normal dose as defined in section 24-1A or that the liquor consumed was a toilet preparation] or an antiseptic preparation or solution, or a flavouring extract essence or syrup, containing alcohol, the consumption of which is not in contravention of the Act or any rules, regulations or orders made thereunder, shall be upon the accused person, and the Court shall in the absence of such proof presume the contrary. (3) The provisions of sub-section (2) shall not apply to the consumption of any liquor— (a) by in-door patients during the period they are being treated in any hospital, convalescent home, nursing home, or dispensary, maintained or supported by Government or a local authority, or by charity, or (b) by such other persons, in such other institutions, or in such circumstances as may be prescribed.]

આથી ઉક્ત જણાવેલ કલમ માં હવે **Possession** તથા **Transports** શબ્દ દુર કરી નવી કલમ ૬૬એએ ઉમેરવામાં આવેલ છે. આથી હવે આ ગુનો ફક્ત દારુ પીવા સબબનો રહી ગયેલ છે. જેમાં પ્રથમ વખત નાં ગુના માટે કોઈ નવી સજા ૨૦૧૬ ના સુધારા થી વધારવામાં આવેલ નથી. એટલેકે ૬ માસ ની જ મહત્તમ સજા છે.

10. વધુમાં સદર કેસ કોગ્નીઝેબલ છે કે કેમ તે સત્તા તો જુની કલમ ૧૧૮ બોમ્બે પ્રોહીબીશન એક્ટ મુજબ મળે છે જે નીચે મુજબ છે.

S. 118 Procedure of Code of Criminal Procedure relating to Cognizable Offences to apply In absence of any provision to the contrary in this Act the Provisions of the Code of Criminal Procedure, 1898 with respect to **Cognizable Offences shall apply** to the Offences under This Act.

11. આથી કલમ ૧૧૮ માં જે ગુજરાત પ્રોહીબીશન એક્ટ નાં ગુના થતાં હતાં તે ગુના કોગ્નીઝેબલ માની ને તે મુજબ ક્રીમીનલ પ્રોસીજર કોડ ની જોગવાઈઓ મુજબ FIR દાખલ થતી હતી. જે સને ૨૦૧૬ નાં અંત સુધી મહદાં શે ખરુ હતુ.

12. ૩. ગુજરાત પ્રોહીબીશન એક્ટ ૧૯૪૯ માં આવેલ સને ૨૦૧૬ માં આવેલ સુધારા The Gujarat Prohibition (Amendment) Act, 2017 (Act 9 of 2017) મુજબ સદર કલમ ૧૧૮ રદ કરવામાં આવેલ છે, જે નીચે મુજબ છે.

**Deletion of Sec 118 of Bom XXV-21- In principal Act Sec. 118 shall be deleted.**

13. આથી હવે આ કાયદામાં આ કલમ ૧૧૮ નુ અસ્તીત્વ ન રહેવાથી તે કલમ કોગ્નીઝેબલ રહેતી નથી. અને વળી સમગ્ર ગુજરાત પ્રોહીબીશન એક્ટ ૧૯૪૯ (૨૦૧૭ નાં સુધારા સહિત) એક્ટ કોગ્નીઝેબલ છે કે કેમ તે બાબતે શાં ત **SILENT** છે. આ સુધારા સાથે આ કાયદા ની કલમ ૧૧૬ પણ ૨૦૧૭ ના કાયદા નાં સુધારા કલમ ૧૯ થી રદ કરવામાં આવેલી. કાયદા નો ઘડવૈયા નો આ સદર ઈરાદો જોતાં તેઓ સદરહુ પ્રોહીબીશન એક્ટ કાયદા માં સુધારો કરી ને તેમાં સજા દસ વર્ષ સુધી ની વધારેલ હતી તેથી તે સજા વધારી ને તે સબબ ક્રીમીનલ પ્રોસીજર કોડ ૧૯૭૩ ની અનુસુચી શીડયુલ ૨ અનુસાર થવા નો હોય તેવો ઈરાદો હોવાનુ જણાય છે.

14.

15. ૪. લેજીસ્લેચર નો જે ઈરાદો હોય પણ કલમ ૧૧૮ રદ કરતાં હવે કાયદામાં તમામ કલમો કોગ્નીઝેબલ રહેલ ન હોવાથી તે સીઆરપીસી નાં શીડયુલ ૨ મુજબ અનુસરશે તે નીચે મુજબ છે.

| Offence                                                     | Cognizable or Non Cognizable | Bailable or non bailable | BY what Court Triable |
|-------------------------------------------------------------|------------------------------|--------------------------|-----------------------|
| If punishment with Death, Imprsonment for Life, Or Imp more | Cognizable                   | Non-Bailable             | Court of Session      |

|                                                                                   |                       |                |                           |
|-----------------------------------------------------------------------------------|-----------------------|----------------|---------------------------|
| than 7 years                                                                      |                       |                |                           |
| If punishable with Imprisonment for 3 years and Upwards but not more than 7 years | Cognizable            | Non-Cognizable | Magistrate of First Class |
| <b>If Punishment with Imprisonment for less than 3 years or with fine Only</b>    | <b>Non-Cognizable</b> | Bailable       | Any Magistrate            |

16. આથી ઉપરોક્ત પ્રથમ વખતનો પ્રોહીબીશન એક્ટ ની કલમ ૬૬(બી) નો ગુનો હોય તો મહત્તમ સજા ની જોગવાઈ એ માત્ર છ માસ ની તથા બીજા ગુનાની ૨ વર્ષ ની હોવાથી તે **Non-Cognizable** ગુના ની શ્રેણીમાં આવે છે તેથી તે ગુના માટે કલમ ૧૫૫ સીઆરપીસી મુજબ ની પરમીશન લીધી ન હોય તો મેજીસ્ટ્રેટ થી તેની ફરીયાદ કે ચાર્જશીટ થી સંજ્ઞાન લઈ શકાય નહીં.

17. અંતે વધુ ચર્ચા નહીં કરીને ફક્ત નામદાર સુ.કો નાં જજમેન્ટ **Keshav Lal Thakur V/s. State of Bihar**<sup>2</sup> ની ચર્ચા કરીએ તો તે મુજબ.....

. The offence under Section 31 of the 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.

18. આથી હવે The Gujarat Prohibition (Amendment) Act, 2017 (Act 9 of 2017) ના સુધારા બાદ કલમ ૬૬(૧)બી બોમ્બે પ્રોહીબીશન એક્ટ ની કલમ કોગ્નીઝીબલ રહેલ ન હોઈ તે મુજબ તેનું સંજ્ઞાન લઈ શકાય નહીં.

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પાર્ટ એ અને પાર્ટ બી ની સંયુક્ત ચર્ચા

19. As discussed in Part A offence of Sec 185 MV Act is Non Cognizable. As discussed in Part B, This court is not in position to draw charge of Sec 85 of Prohi Act against accused and accordingly dropped the charge against

<sup>2</sup> 1996 (11) SCC 557

accused. Further, The offence of Sec 66b is Non-Cognizable against as discussed in Part B of this Order. Hence, In total, this Court can not take cognizance of this chargesheet of Sec 66B of Prohi act and 185 of MV ACT because both this section are Non-Cognizable and barred by Sec 155(2) of CR PC. Hence finally we can say that as per Sec 190, this Court is not in position to take cognizance of this Case. Accordingly following order is passed.

**Final Order**

**(I) The Cognizance of this criminal case is not taken as per Sec 210 BNSS ( Old 190 of CRPC) . The Proceeding against the accused person MV Act S 185 & u/s 66b of Guj Prohi Act 2015 (amendment) (if any) is hereby dropped with liberty to prosecution to take such steps as he deems fit in accordance with law. If any muddamal recovered shall be disposed in accordance with law of Criminal Manual. Vehicle be released to RC book owner. Non Valuable (if any) Muddamal be destroyed.**

Pronounced in Opon Court today

CJM Court, DAHOD

Dt : 13/12/2025

W R Malik

CJM, DAHOD, GJ01144