

:: ORDER BELOW EXHIBIT 1::

1. Whether the offence punishable under section 185 and other offences under the Motor Vehicles Act (for short, "the Act"), where the maximum punishment prescribed is upto 3 years, are cognizable or non- cognizable in character? Could the Magistrate take cognizance of the said offences on a charge sheet submitted by the police following an investigation in violation of section 155(2) of the Code of Criminal Procedure (for short, "the Code"). What is the procedure to be followed by the Magistrate when a charge sheet is filed following investigation in violation of section 155(2) of the Code? These questions arise for a decision in this proceeding.
2. Heard Shri M.V. Ranpara, learned APP on behalf of the State at length, whereby it is mainly contended that section 202 of the Act bestows powers upon the Investigating Officer to arrest the accused in this offence for a period of two hours and, therefore, this offence may be treated as cognizable and not non-cognizable and, thereby prayed for issuance of process upon the accused.
3. Section 185 of the Act envisages that it is an offence by driving vehicle in a drunken state by a person. The offences under the Act being sections 181, 184 and 185 are non-cognizable offences. Hence, the police cannot file charge sheet without permission of the Court as per the bar of section 155(2) of the Cr.P.C. If the cognizance is taken by the Magistrate of offences punishable under section 184 and 185 of the Motor Vehicles Act on a charge sheet submitted by the police officer after an investigation in violation of section 155(2) of the Code is illegal. The said charge sheet cannot also be deemed to be a complaint as defined under section 2(d) of the Code.
4. At this stage, it would be apposite to refer to the various decisions of the Hon'ble Apex Court as well as various Hon'ble High Courts on the point, which read as under : 4.1 In the decision in the case of **Rani Shashank Doshi v. State of Maharashtra, reported in (2014) 1 BOMCR (CRI) 339**, it has been observed and held as under :
"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 MV Act is not cognizable."
5. Further, in the decision in the case of **Sandeep Indravadan Sagar v. State of Maharashtra, reported in 2013 Cr.L.J. 1147**, it has been observed and held as under:
"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 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."

6. At this stage, it would be apt to reproduce the relevant observations of the Hon'ble Apex Court in the case of **Keshav Lal Thakur v. State of Bihar, reported in (1996) 11 SCC 557**, wherein it has been observed and held as under :

"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 3

7. At last, it would be profitable to quote the relevant observations of the decision of the Hon'ble Kerala High Court in the case of **Mehboob Koya Moideen v. State, reported in 2011 (2) Ker.L.J.574**, which read as under :

"'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."

"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."

8. Having considered the aforesaid decisions of the Hon'ble Apex Court as well as various Hon'ble High Courts, the contention of the learned APP that the offence punishable under section 185 of the M.V. Act is a cognizable offence does not find any favour and the same deserves to be rejected. Thus, for the foregoing reasons, this Court is not supposed to take cognizance on a chargesheet filed qua non-cognizable offence whereby no permission for investigation has been sought for. Hence, this Court passes the following final order :

:: ORDER ::

1. The chargesheet of this criminal case filed under section 185 of the Motor Vehicle Act is hereby ordered to be returned to the Investigating Officer in view of bar of section 155 of the CrPC as the offence itself is non-cognizable offence. The application at Exhibit 2 is hereby rejected.

2. It will be open for the Investigating Officer to take legal recourse available to him under the law.

3. Insofar as the muddamal vehicle is concerned, the same be returned to its owner on verifying the original RC Book/Smart Card and keeping a copy thereof in record. If any interim order is passed qua such muddamal, the same is hereby confirmed.

Pronounced in the open Court today on this 26th Day of June, 2022 at Surat.

- Sd /-

PLACE: SURAT
DATE : 26.06.2022

AAKAR L. TRIVEDI
6TH JMFC, SURAT
(CODE NO.GJ01557)