

Order below Exhibit- 1

The present chargesheet has been filed before this Court against the accused under Section 122 of the Gujarat Police Act, 1951(hereinafter referred to as “GP Act”) for being found under suspicious circumstances between sunset and sunrise. The question which requires consideration is whether this court can take cognizance of an offence under Section 122 of the GP Act on the basis of a chargesheet.

Before answering this question, the first point which requires determination is whether the abovementioned offence is cognizable or not. At this stage, scheme of the GP Act is required to be taken into consideration. On perusing the provisions of this Act, it is clear that Section 90A is made cognizable through sub-section (4), Section 118 is made cognizable through sub-section (1C) and Section 143B through sub-section (3); thereby making it clear that wherever the legislature intended to make any particular offence cognizable, it has specifically done so, meaning thereby that the remaining offences are meant to be non-cognizable. Furthermore, looking into the silence of the legislature as to the cognizance of the offence at hand, it is important to refer to Part II of Schedule 1 of the Code of Criminal Procedure, which provides for ‘classification of offences against other laws’. In the said part, reference is to be made to the provision which provides that offence punishable with imprisonment for less than 3 years or with fine only, the said offences shall be non-cognizable. Looking into the punishment prescribed for the offence at hand, scheme of the Code of Criminal procedure as well as GP Act, the abovementioned offence squarely falls within the category of a non-cognizable offence.

Now, since it is explicit that the offence is a non-cognizable offence, what is left to be seen is whether this Court can take cognizance of the offence at hand on the basis of a chargesheet, for which reference is required to be made to Section 155(2) of the Code of Criminal Procedure, which provides that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

Keeping in mind the settled law, it is explicit that the police cannot investigate a non-cognizable offence without prior permission of the concerned Court and consequently, no chargesheet can be filed in a non-cognizable offence, since it requires a written complaint. Therefore, looking into the facts of the case at hand, legislative scheme of GP Act as well as Code of Criminal Procedure, it is clear that this court cannot take cognizance of the offence mentioned in the chargesheet. Therefore, this court passes the following order in interests of justice.

Order

No cognizance shall be taken of the offence made out in the chargesheet, in absence of fulfilment of the mandate of law. It shall be open to the State to file fresh proceedings against the accused within the prescribed period as per law.

Muddamal seized, if any, shall be disposed off in accordance with law.

Order Signed and Pronounced in open Court today on this 9th day of December 2023.

Date: 09/12/2023

(Aashima Garg)

Place: Surat

10th Additional Civil Judge, Surat
GJ01654