

Order Below Exh.4

(1) The present application is filed by the Ld. Advocate for the accused seeking stoppage of proceedings in this case instituted under Section 37(1) and section 135 of the Gujarat Police Act, 1951 (hereinafter referred to as "the Act"). The principal ground raised is that the investigation carried out by the police is wholly without jurisdiction since the offence under Section 135 is non-cognizable and the mandatory requirement of obtaining prior permission of the competent Magistrate under Section 174(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "the Sanhita") has not been complied with.

(2) Section 135 of the Act provides punishment up to one year. As per Part II of the First Schedule of the Sanhita, offences under special or local laws punishable with imprisonment for less than three years or with fine or with both, are to be treated as non-cognizable and bailable, unless specifically declared otherwise. The Gujarat Police Act itself declares only Sections 90-A, 118 and 143-B as cognizable. No such declaration exists for Section 135. Thus, the offence under Section 135 is non-cognizable.

(3) Certain provisions of the Act, such as Sections 62, 70, 71, 72, 73, 79, 80 and 81, confer limited powers of arrest upon police officers in emergent circumstances. However, the conferment of such powers of arrest does not, by itself, convert a non-cognizable offence into a cognizable one. The law draws a clear distinction between the power to arrest and the power to investigate. For investigation into a non-cognizable offence, the mandate of Section 174(2) of the Sanhita is explicit — *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.*

(4) In the present case, it is evident from the record that the police registered and investigated the offence under Section 135 of the Act without seeking or obtaining any order from this Court or any other competent Magistrate as required by Section 174(2) of the Sanhita. The investigation is therefore without jurisdiction.

(5) The Hon'ble Supreme Court in *Keshav Lal Thakur v. State of Bihar*, (1996) 11 SCC 557 has laid down that where the police investigates a non-cognizable offence without the prior order of the Magistrate, such investigation and the resultant charge-sheet are illegal and void, and the Magistrate cannot take cognizance upon it. Similarly, the Hon'ble Gujarat High Court in *Waghari v. State of Gujarat*, Criminal Misc. Application No. 15226 of 2007, decided on 14.12.2009, held that investigation of an offence under the Gujarat Police Act, being non-cognizable, cannot be undertaken without prior permission of the Magistrate.

(7) As regards the contention that a police report could be treated as a complaint, it is to be noted that the explanation to Section 2(h) of the Sanhita applies only where the police initially investigates a cognizable case but ultimately submits a report disclosing only a non-cognizable offence. It has no application where, as here, the investigation is from inception into a non-cognizable offence without permission of the Magistrate. (See *Kunhumammed v. State of Kerala*, Cri. M.C. No. 702 of 2011; *Moin Basha Kurnooli v. State of Karnataka*, 2014 Lawsuit (Kar) 2048).

(8) The principle that flows is that the investigation being without authority of law, the charge-sheet is a nullity in the eyes of law. This Court cannot treat such a charge-sheet as a complaint nor can it proceed to trial upon it. Continuation of proceedings would amount to perpetuating an illegality.

(9) Accordingly, the application filed by the Ld. Advocate for the accused deserves to be allowed.

Final Order

1. The application Exh.4 is hereby allowed.

The proceedings in C.C. No. 23133 of 2025 under Section 37(1), 135 of the Gujarat Police Act, 1951 are hereby stopped/dropped as being without jurisdiction.

2. It is clarified that this order shall not preclude the prosecution from taking such steps as permissible under law. Any muddamal, if seized, shall be dealt with in accordance with law.

Pronounced in open Court on this 13 day of September, 2024 at Rajkot.

Rajkot

A.S. Khandelwal

13/09/2025

7th JMFC, Rajkot