ORDER BELOW EX.1.

PIPLOD POLICE STATION CR No- 1145/2025
THE OFFENCE UNDER SECTION - 66(1)(B) OF THE GUJARAT PROHIBITION ACT.

CC ON. 251/ 2026

COMPLAINANT :- THE STATE OF GUJARAT.
Vs.
ACCUSED :- PARVATBHAI GAMIRBHAI BARIA

ORDER

1. Upon perusal of the record in the present matter, it appears that the alleged offence falls under Section 66(1)(B) of the Gujarat Prohibition Act. In the said provision, the clause making the offence cognizable has been removed. As per the settled position of law, if an offence is non-cognizable, the Court cannot take cognizance thereof in view of the bar contained under Section 174(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).
2. The discussion regarding whether Section 66(1)(B) of the Gujarat Prohibition Act is cognizable or non-cognizable is therefore necessary.
   2.1. Prior to the 2017 amendment, under Section 66(1)(B) of the Bombay (Gujarat) Prohibition Act, 1949, the offence relating to consumption of liquor was treated as a cognizable offence, which was as follows:

   SEC.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-

   (b) consumes, uses, possesses-or-transports (strike through words amended after 2017 amendment w.e.f 19/12/2016) any intoxicant [(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,

   (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; [***]

(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; [***]

(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 thousand rupees; [***]

[(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 (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 [not less than 0.05 per cent. weight in volume], then the burden of proving that [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.]

2.2. Thus, from the aforesaid provision, the words **"Possession"** and **"Transports"** have now been removed and a new Section 65AA has been inserted. Consequently, the offence now remains only with respect to consumption of liquor. For the first offence, no new punishment has been enhanced by the 2017 amendment, meaning thereby that the maximum punishment continues to be six months only.

2.3. Furthermore, the authority to determine whether the present offence is cognizable or not is derived from the Section 118 of the Bombay Prohibition Act, which reads as follows:

SEC. 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 Offenses shall apply to the Offences under This Act.

2.4. Thus, under Section 118, the offences committed under the Gujarat Prohibition Act were treated as cognizable offences, and accordingly FIRs were registered as per the provisions of the Criminal Procedure Code. This position largely remained in force until the end of the year 2016.

2.5. However, by virtue of the amendment introduced in the Gujarat Prohibition Act, 1949, namely **The Gujarat Prohibition (Amendment) Act, 2017 (Act 9 of 2017)**, the said **Section 118 has been repealed**.

2.6. Thus, as Section - 118 no longer exists in the statute, the offences under the said provision cannot now be treated as cognizable. Moreover, the Gujarat Prohibition Act, 1949 (as amended in 2017) is silent on the question of whether the offences under the Act are cognizable or not. Along with the said amendment, Section 116 of the Act was also repealed by Section 19 of the Gujarat Prohibition (Amendment) Act, 2017. Considering the legislative intent behind these amendments, it appears

that the Legislature amended the Prohibition Act and, in certain provisions, enhanced the punishment up to ten years, thereby indicating that such offences were intended to be governed in accordance with Schedule II of the CrPC now Bharatiya Nagarik Suraksha Sanhita, 2023.

2.7. However, irrespective of the legislative intent, once Section 118 has been repealed, and since the Act no longer expressly declares the offences to be cognizable, the classification of such offences is required to be determined in accordance with Schedule I, Part II of the Bharatiya Nagarik Suraksha Sanhita, 2023, which deals with the classification of offences against other laws. As per the said Schedule, if an offence is punishable with imprisonment for less than three years or with fine only, the offence shall be treated as non-cognizable and bailable, and shall be triable by any Magistrate. Therefore, since the offence under Section 66(1)(B) of the Gujarat Prohibition Act, for a first offence, provides a maximum punishment of six months, the said offence falls within the category of a non-cognizable and bailable offence under Schedule I, Part II of the BNSS.

3. Thus, in the present case, if the offence is a first-time offence under Section 66(1)(B) of the Prohibition Act, the maximum punishment prescribed is only six months. Therefore, the said offence falls within the category of a Non-Cognizable offence. Consequently, if the permission as required under Section 174(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has not been obtained, the Magistrate cannot take cognizance of the offence on the basis of the complaint or charge-sheet.

4. At this stage, without entering into further detailed discussion, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in case of ***Keshav Lal Thakur V/s. State of Bihar, 1996 (0) AIJEL-SC 14434***, which reads as follows:

"3.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."

5. Thus, after the amendment introduced by **The Gujarat Prohibition (Amendment) Act, 2017 (Act 9 of 2017)**, **Section 66(1)(B) of the Bombay Prohibition Act** no longer remains a **cognizable offence**, and therefore **cognizance of the same cannot be taken**. Hence, the following order is passed:

FINAL ORDER

- The cognizance of the present case is not taken in view of **Section 210 of the BNSS, 2023**. Proceedings against the accused under **Section 66(1)(B) of the Gujarat Prohibition Act** are hereby **dropped**, with liberty to the prosecution to take appropriate steps in accordance with law. Muddamal, if any, be disposed of as per law.

The order Signed and pronounced in special sitting in the open Court today.

Date :- 14/03/2026
Place :- Devgadhbaria.

[S.O.Garg]
Addl. JMFC, Devgadh Baria.
UID Code :- GJ01738.