**ORDER BELOW EX.1.**

**PIPLOD POLICE STATION CR No- 0796/2025**
THE OFFENCE U/S - 66(1)(B) OF THE GUJARAT PROHIBITION ACT AND U/S 185 OF THE MOTOR VEHICLE ACT .

CC ON. 330/ 2026

COMPLAINANT :- THE STATE OF GUJARAT.

Vs.

ACCUSED :- SHABBIRBHAI ALIAS MANISH BHARVAD YASIMBHAI MALEK

**ORDER**

1. This Order is passed in two parts. Part A shall deal with the issue pertaining to Section 185 of the Motor Vehicles Act, whereas Part B shall consider and adjudicate upon the provisions of Section 66(1)(B) of the Gujarat Prohibition Act.
2. **Part – A : Deliberation on Section 185 of the Motor Vehicles Act.**
   - 2.1. This litigation arises under Section 185 of the Motor Vehicles Act. The Learned APP has been heard at length in this regard. The core question for determination before this Court is whether this Court can take cognizance of the said offence and whether the said offence is non-cognizable. The answer to the said question is in the negative for the reasons discussed hereinafter.
   - 2.2. The Sec. 510 of the Indian Penal Code, 1860 provides that any person who, in a state of intoxication, appears in a public place and conducts himself in a disorderly manner shall be punished with simple imprisonment which may extend to twenty-four hours. The said offence is also a non-cognizable offence.
   - 2.3. Now referring to Section 185 of the Motor Vehicles Act, the said provision contemplates an offence committed by a person who drives or attempts to drive a motor vehicle while under the influence of alcohol. The offences punishable under Sections 184 and 185 of the Motor Vehicles Act are non-cognizable in nature. Hence, the police cannot file a charge-sheet without prior permission

of the Court in view of the bar contained under **Section 174(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023**.

**2.4.** If cognizance is taken by the learned Magistrate for the offences punishable under Sections 184 and 185 of the Motor Vehicles Act on the basis of a charge-sheet submitted by a police officer after investigation conducted in violation of **Section 174(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023**, such cognizance would be illegal. The said charge-sheet also cannot be treated as a complaint as defined under **Section 2(1) (h) of the Bharatiya Nagarik Suraksha Sanhita, 2023**, which defines "complaint." Consequently, the cognizance so taken, being illegal, is liable to be quashed. In support of the aforesaid proposition, reliance has been placed upon certain judicial authorities, copies whereof have been supplied to the learned APP. However, no contrary legal position has been brought to the notice of this Court.

**2.5.** In the present matter, the Court takes note of the decision of the Supreme Court in ***Rani Shashank Doshi Versus State Of Maharashtra, 2013 (0) AIJEL-MH 167221***, wherein it was held that,

*"45…….The learned Single Judge's observations thereafter need not detain us because once the above view on facts can be taken, then, the further aspects of the question as to whether the offence punishable under section 185 of the MV Act is cognizable or non-cognizable need not be decided. In any event, the offence cannot be said to be cognizable only because a power is conferred to arrest any person committing such offence, without warrant. It is apparent that a person arrested in connection with an offence punishable under section 185 of the MV Act has to be subjected to a medical examination referred to in sections 203 and 204 by a registered medical practitioner. The Breath Test has to be carried out so as to ascertain whether there was presence of alcohol in his body or a person was under the influence of a drug. Therefore, this is not an absolute power to arrest without warrant, but subject to the conditions specified in law and there are inbuilt safeguards and*

*protection so that a person is not deprived of his life and liberty. In these circumstances merely because the power to arrest without warrant is conferred in a police officer in uniform does not mean that the offence is cognizable. Even if a person is to be subjected to the tests, 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 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 an 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."*

2.6. The Court also places reliance on the decision in ***Keshav Lal Thakur V/s. State of Bihar, 1996 (0) AIJEL-SC 14434***, wherein the Court observed that,

*"3. 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."*

**2.7.** The Court also places reliance on the decision in ***Mehaboob Koya Moideen Versus State, 2011 (0) AIJEL-KR 1130957,*** wherein the Court observed that,

*'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."*

**3.** In view of the foregoing discussion, I am of the opinion that cognizance cannot be taken of the chargesheet in respect of the non-cognizable offence under Section 185 of the Motor Vehicles Act.

**4.** **Part – B : Deliberation on Section 66(1)(B) of the Gujarat Prohibition Act.**

**4.1.** The discussion regarding whether Section 66(1)(B) of the Gujarat Prohibition Act is cognizable or non-cognizable is therefore necessary.

**4.2.** 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.]

**4.3.** 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.

**4.4.** 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.

**4.5.** 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.

4.6. 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**.

4.7. 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.

4.8. 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.

5. 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.

6. In view of the fact and foregoing discussion the offence under Section 185 of the Motor Vehicles Act and Section 66(1)(B) of the Gujarat Prohibition Act are both non-cognizable, and being barred by Section 174(2) of the Bhartiya Nagrik Suraksha Sanhita, 2023, this Court is not in a position to take cognizance of the present matter. Accordingly, having considered all aspects of the case and in terms of Section 210 of the Bhartiya Nagrik Suraksha Sanhita, 2023, I am constrained to hold that no further proceedings can be initiated at this stage. Hence, I passed the following order.

**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 185 of the Motor Vehicles Act and 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.**