

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,

Taluka:- Devgadhi Baria District :- Dahod

ORDER BELOW EXH - 01

1. The investigating officer has filed the present charge-sheet/report against the accused for the alleged offence punishable under Section 66(1)(b) of the Gujarat Prohibition Act, 1949 . The allegation is limited to the consumption of liquor.
2. Heard Ld. APP for the State. He has submitted that the police have filed the present report after investigation. However, regarding the legal issue of the 2017 Amendment and the cognizability of the offence, he has submitted that the Court may pass an appropriate order in accordance with the law.
3. I have gone through the police report and the papers accompanying it, and I have read the relevant provisions of the Gujarat Prohibition Act, 1949, specifically the Gujarat Prohibition (Amendment) Act, 2017 (Gujarat Act No. 9 of 2017). I have also considered the procedural mandates of the Code of Criminal Procedure, 1973 (CrPC) and the corresponding provisions of the Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS). On perusal of the record, it appears that the Legislature has, by the said amendment, deleted Section 118 of the principal Act which previously classified all offences under the Act as cognizable. Consequently, in the absence of a specific provision in the special Act, the classification of the offence is governed by Part-II of Schedule-I of the CrPC and the corresponding Schedule-I of the BNSS. Since the maximum punishment prescribed for the offence punishable under Section 66(1)(b) extends to six months, which is less than three years, the offence is statutorily classified as Non-Cognizable. It is evident from the record that the Investigating Officer has not obtained prior permission from the competent Magistrate as mandated under Section 155(2) of the CrPC and corresponding to Section 174(2) of the BNSS before initiating the investigation. Relying on the ratio laid down by the Hon'ble Supreme Court in **Keshav Lal Thakur v. State of Bihar (1996) 11 SCC 557**, I am of the opinion that the investigation carried out without such permission is illegal and bad in law. The statutory bar against police investigation in non-cognizable cases without a Magistrate's order remains a fundamental procedural safeguard under both the old Code and the new Sanhita. Therefore, this Court cannot take cognizance based on such a vitiated report. Hence, this court has passed following final order in the interest of justice.

:: Final Order ::

- The present criminal proceedings instituted against the accused are hereby DROPPED.
- The accused is discharged from his bail bonds and surety.
- The seized muddamal (perishable liquor/empty bottles), being contraband, is ordered to be destroyed/disposed of in accordance with the provisions of the Gujarat Prohibition Act and the Criminal Manual.

Order is signed and pronounced in open court in Special Sitting.

Date:14/03/2026

Place: Devgadhi Baria, Dahod

(S.R.Vakil)

Judicial Magistrate First Class

Devgadhi Baria, Dahod