

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,

Taluka:- Devgad 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 and the relevant provisions of the Motor Vehicles Act, 1988 .
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 offences, 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 read the relevant provisions of the Motor Vehicles Act, 1988. 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).
4. At the outset, if this court discuss, the relevant provisions of the Gujarat Prohibition Act, 1949, it appears from the record 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.
5. Further, if this court discuss, the relevant provisions of the Motor Vehicles Act, as per section 202 of the Act, the conditional power of arrest conferred upon a police officer under the Motor Vehicles Act for the limited purpose of subjecting a person to a breath test does not alter the inherent non-cognizable character of Section 185. In Rani Shashank Doshi v. State of Maharashtra, (2014) 1 BOMCR(CRI) 339 is it observed that merely because a special statute confers the power to arrest without a warrant upon a police officer in uniform, it does not automatically render the offence cognizable. The power of arrest under the Motor Vehicles Act is highly conditional and strictly circumscribed by procedural safeguards, such as the requirement of a reasonable cause, conducting a breath analysis test, and specific exclusions if the person is an indoor hospital patient. Such restricted empowerment does not alter the fundamental non-cognizable nature of the offence under Section 185, which is firmly established by its prescribed punishment of less than two years.
6. Now it is an admitted position on record that the Investigating Officer has not obtained the mandatory prior permission from the competent Magistrate under Section Section 174(2) of the BNSS (old section 155(2) of CrPC) before initiating the investigation into these non-cognizable offences. Relying on the ratio laid down by the Hon'ble Supreme

Court in **Keshav Lal Thakur v. State of Bihar (1996) 11 SCC 557**, this court 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 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.
- In respect of the muddamal vehicle, if any order has been passed during the pendency of the proceedings, the same shall remain in force. If no such order has been passed, the concerned P.S.I. is ordered to dispose of the vehicle following the guidelines established by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gujarat**, and report back to this Court.

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

Devgadh Baria, Dahod