

Order Below Ex-1

Cr. Case No.14894/ 2019

GPA : 122(c)

In this case police filed charge sheet against the accused by alleging that, accused was found at a open place with the gestures of concealing his identity in the darkness of night with the intention to commit an offence. Bare reading of section 122 C of Bombay Police Act reveals that if any person is found under suspicious circumstances between sunset and sunrise in any dwelling-house or other building, or on board any vessel or boat without any satisfactory account of his presence there then only he can be made accused under this section. In the case at hand no such allegation is made out against the accused.

Legality and operation of section 122-C with the similar facts has been dealt in the case of **Pradeep Ramesh Kumbhare Vs. State of Maharashtra 2012 ALLMR (Cri) 1894** wherein it was held that to constitute the offence under section 122(c) of the Bombay Police Act, concerned person must be found under suspicious circumstances between sunset and sunrise in any dwelling-house or other building, or on board any vessel or boat without any satisfactory account of his presence. Admittedly the,applicant was not found in any dwelling-house or building and the allegation against him that he was found in darkness near the house of someone. The prosecution of the applicant,therefore,for the offence punishable under section 122(c) of Bombay Police Act ,1951 couldn't have initiated. It is not sustainable according to law and will have to be quashed and set aside.

Hon'ble Delhi High Court in **Court on its own motion Vs. Central Bureau of Investigation 109(2004) DLT 494** in para 10 has held that if charge sheet is submitted in Court and Magistrate is not agreed with the report then he has to drop the proceedings against the accused.

Sine qua non for taking cognizance has been elaborately explained by the Hon'ble Apex Court in the case of **Sunil Bharti Mittal Versus Central Bureau of Investigation SLP (Crl.)No. 2961 of 2013** as Sine Qua Non for taking cognizance is the application of mind by the magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is therefore imperative that on a complaint or on police report, the magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect.

Thus in the backdrop of above mentioned guidelines imparted by the Hon'ble Supreme Court & Hon'ble High Courts, in the case in hand even on accepting the every word as true and correct, it fails to disclose any commission of act by which the ingredients of section 122-C of the Gujrat Police Act are attracted,thus the Court is passing the final order.

Final Order

Proceeding against the accused is hereby dropped and hence case disposed of.

Place:Vadodara.

Date:10.07.2021

(B.M.Gadhiya)

(Batukraj Mahendrakumar Gadhiya)

Judicial Magistrate First Class

Vadodara.

(Code No.GJ01176)

Special Sitting On National Lok Adalat.