

Order below Exh -01 and Exh - 4

1. In the present case, chargesheet has been filed after investigation against the present accused for offences under sections 323, 504 of the Indian Penal Code hereinafter referred as 'IPC') and section -135 of the Gujarat Police Act, 1951 (hereinafter referred as 'GP Act').
2. The question which requires consideration is whether this Court can take cognizance of an offence 323, 504 of the IPC and section 135 of the GP Act on the basis of a chargesheet. Looking to the schedule-1 of the Code of Criminal Procedure, 1973, section 323 and 504 of IPC are non - cognizable. Thus, it is clear that the offences under section 323 and 504 of IPC are non - cognizable.
3. Another question which requires consideration is whether this Court can take cognizance of an offence under section 135 of the GP Act on the basis of a chargesheet.
4. Upon perusing the provisions of this act for determination of the question whether the present offence is cognizable or not, it is clear that section 90A is made cognizable through sub- section (4), section 118 is made cognizable through sub-section (1C) and section 143B through sub-section (3); thereby making it clear that wherever the legislature intended to make any particular offence cognizable it has specifically done so, while the rest are left undeclared. Furthermore, looking into the silence of the legislature as to the cognizance of the offence at hand it is important to refer to Part 2 of schedule one of the Code of Criminal Procedure which provides for 'classification of offences against other laws'. In the said part reference is to be made to the provision which provides that offence punishable with imprisonment for less than 3 years or with fine only, the said offence shall be non cognizable. Looking into the punishment prescribed for the offence at the hand, scheme of the Code of Criminal Procedure as well as GP Act the above mentioned offence falls within the category of non cognizable offence.
5. Now, since it is explicit that the offence is a non cognizable offence what is left to be seen is whether this Court can take cognizance of the offence such as on the hand on the basis of a chargesheet, for which reference is required to be made to Section 155 (2) of the Code of Criminal Procedure which provides that no police officer shall investigate a non cognizable case without the order of a magistrate having power to try such case or commit the case for trial.
6. Keeping in mind the settled law, it is explicit that the police cannot investigate a non cognizable offence without prior permission of the concerned court and consequently no chargesheet can be filed in a non-cognizable offence, since it requires a written complaint. Therefore, looking into the facts of the case at hand, legislative scheme of GP Act as well as Code of Criminal Procedure, it is clear that this Court cannot take cognizance of the offence mentioned in the chargesheet. Therefore, this court passes the following order in the interest of Justice.

ORDER

No cognizance shall be taken of the offence made out of in the charge sheet in absence of fulfilment of the mandate of law. It shall be open to the State to file fresh proceedings against accused within the prescribed period as per law.

Muddamal seized, if any, shall be disposed of in accordance with law.

Date - 09/12/2023

Place - Surat

(P. P. Kala)

(16th Addl. Civil Judge and JMFC, Surat)

GJ01761