

Order Below Exh.1

- 1) Read the chargesheet & police papers.
- 2) In this case the investigation officer has filed the chargesheet against accused for the offence u/s.185 of Motor Vehicles Act, 1988 and section 66.1.B of Gujarat prohibition act. The important question that needs addressing here is whether this Court can take cognizance of offence stated above?
- 3) A bare perusal of Section 185 of Motor Vehicles Act, 1988 would indicate that the penal provision for this offence has been imprisonment upto six months or with fine upto rupees ten thousand or with both for the first offence. Though Sec.202 of Motor Vehicles Act, 1988 gives power to investigating agency to arrest the accused, the entire Act nowhere specifies that the offence u/s.185 is a cognizable offence. In this scenario Part II of First Schedule of Criminal Procedure Code, 1973 would squarely apply which would make the offence u/s.185 of Motor Vehicles Act, 1988 a bailable and non-cognizable offence.
- 4) Section 66.1.b. of prohibition act contains the punishment upto 6 month and fine of rs. upto 1000/- for the first offence. Hence as per discussion above this offence is also non cognizable offence.
- 5) Since the provisions of law cited above make the offence u/s.185 of M V Act and prohibition section 66.1.b non-cognizable, it is sine-qua-non for the concerned investigating officer to seek permission of jurisdictional Court in compliance of Sec.155(2) of Criminal Procedure Code, 1973 before commencement of any investigation in the alleged offence.
- 6) In the case at hand, it is apparent that charge-sheet has been filed for the offence u/s.185 of Motor Vehicles Act, 1988 and the case papers nowhere indicate that the provisions u/s.155(2) of Criminal Procedure Code, 1973 have been complied with. In such circumstances, this Court would be unable to take any cognizance on the

charge-sheet filed before this Court. This Court would also go a step further and say that had cognizance been already taken, then also, the proceedings are liable to be dropped for want of compliance of Sec.155(2) of Criminal Procedure Code. For this proposition, this Court relies on the judgment of ***Rupan Deol Bajaj & anr. v. Kanwar Pal Singh Gill & anr. – AIR 1996 SC 309*** wherein it has been held that the investigation of a non-cognizable offence by the police without the permission of the competent Magistrate is illegal, not curable and contrary to the provisions of this section.

- 7) This Court also relies on the judgment of Hon'ble Kerala High Court in the case of ***Sagimon @ Prakash v. State of Kerala – 2014 CrLJ 4657 (Ker)*** wherein a similar question had come before the Hon'ble Court for consideration. In the said case, it was held -

“Of course, it is true that Section 202 of the motor vehicles act provides that a police officer in uniform may arrest without warrant, any person who in his presence commits an offence punishable under Section 184 or Section 185 or Section 197 of the motor vehicles Act. This does not mean that the offence is made cognizable. This is only a special power given to arrest, but the offence as such is not made cognizable. This position is well settled by this Court in *Mehaboob V. State*. When the offence is not cognizable, the police officer is not empowered to register FIR under Section 154 of Cr.P.C. He will have to follow the procedure prescribed under Section 155 of Cr.P.C. Section 155 (2) Cr.P.C contains a prohibition that no police officer shall investigate a non-cognizable case without an order of the Magistrate having power to try such case or commit the case for trial. But here no such permission or order was obtained by the Sub Inspector of Police before registering FIR or before proceeding for investigation. Much discussion is not

required to find that the whole prosecution in this case is unauthorised and illegal. Without complying with the necessary procedure prescribed under Section 155(2) of Cr.P.C, the Sub Inspector of Police straight away registered FIR in this case. Without obtaining permission or orders he conducted investigation and submitted final report, as is done in a case of cognizable offence. No doubt the whole procedure is illegal."

8) Keeping in view the detailed discussion above, it clearly comes on record that taking cognizance in the alleged offence or adjudicating this case would amount to illegality as Sec.185 of Motor Vehicles Act is a non-cognizable offence and the mandatory requirement under Sec.155(2) of Criminal Procedure Code has not been complied with. I therefore pass the following order in the wider interest of justice -

ORDER

- The proceeding against the accused is hereby dropped without the effect as to acquittal or discharge of the accused with a liberty to the prosecution to undertake necessary proceedings as per the provisions of law.
- Investigating officer is directed to return the Muddamal vehicle detained, if any, to its owner after due verification of ownership.

Order declared on dt.09/12/2023 in special sitting L.A.

Date-09/12/2023
Place Rajkot

Special sitting Magistrate &
J.M.F.C(Traffic)Rajkot