

ORDER BELOW EX.1

1. This case is filed against the accused under section 142 of the Gujarat Police Act. The penal provision for the said offence is punishment upto 2 years but not less than six months and fine.
2. There is no specific provision provided for the trial in the Bombay Police Act, 1951. In such circumstances, sec.4 of the Criminal Procedure Code is applicable for the purpose of trial which reads as under:-

4. Trial of offences under the Indian Penal Code and other laws

(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other laws shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Therefore, procedure provided for trials in CrPC will be applicable in the offences punishable in the Gujarat Police Act, 1951.

3. At this stage, the scheme of the Gujarat Police Act is also required to be looked into. It is clear from separate provisions of the Bombay Police Act that sec. 90A and 118 is made cognizable. Except offence punishable under sec. 90A and 118 of the Gujarat Police Act, no other offence is cognizable. As a result, provisions contained in Code of Criminal Procedure Code are directly applicable for the remaining punitive sections of the Gujarat Police Act.
4. Therefore, in absence of any special provision in any statute, offence punishable under s.142 of the Gujarat Police Act is bailable and non-cognizable as per Schedule I Part II of the Criminal Procedure Code. As per Sec.155(2) of Criminal Procedure Code, when an offence is non-cognizable then Police is required to investigate the offence after seeking necessary

sanctions from the competent Magistrate. Sec.155(2) of Criminal Procedure mandates 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. It is clear from this provision that non-cognizable offence is required to be investigated only after the Magistrate having power to try such case passes an order allowing such investigation.

5. In the case of *Keshav Lal Thakur versus State of Bihar* (1996 4 Crimes(SC) 121), Hon'ble Supreme Court had held that the police can neither investigate into an offence nor submit a report wherein the alleged offence was a non-cognizable one and where the investigation was not pursuant to an order of a competent Magistrate under Section 155(2) of CrPC.
6. In the case of *Shivanand Giridhar Naik v. The Senior Inspector of Police and another* (2000 CRI. L. J. 4776), Hon'ble Bombay High Court has held as under:-

"5. Section 155(2) of the Code of Criminal Procedure, 1973 lays down 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. Since the alleged offence committed by the petitioner under Section 145 of the Bombay Police Act, 1951 is a non-cognizable offence, the Police machinery had no authority to investigate into this offence, and therefore, the police ought to have obtained the permission or order from the Magistrate having power to try the said offence. This being the position, the entire investigation carried out and the charge-sheet filed by the police was without any authority or jurisdiction and therefore, the prosecution initiated against the petitioner is required to be set-aside. Reference can be conveniently made to the decision of this Court in *Avinash v. State of Maharashtra*, 1983 Cri LJ 1833, wherein, it has been held that the investigation carried out by the police in respect of non-cognizable offence, without permission obtained from the concerned Magistrate under Section 155(2) of the Code of the Criminal Procedure, 1973, is illegal, and therefore, liable to be quashed."

7. It is apparent that the present case arose from a

complaint in the form of an FIR, the State carried out the entire investigation and ultimately, the present chargesheet has come up before this Court. No permission whatsoever was sought by the police for investigation into the alleged offence.

8. Considering the entire discussion made above, it becomes clear that it is incumbent upon the investigating authorities to seek the Court's permission before commencing any investigation into a non-cognizable offence as per Sec.155 r/w Schedule I Part II of Code of Criminal Procedure, 1973. Therefore, in light of the mandatory provisions of Sec.155(2) of Criminal Procedure Code, this Court has no jurisdiction to take cognizance upon the present chargesheet filed by the State and the present final report filed by the police against accused becomes illegal in the eye of law. When the chargesheet itself is illegal in the eyes of law, "principle of nullity" will apply and should this Court take cognizance, all the subsequent proceedings would also become illegal. Upon discussion of aforesaid provision of law and Judgment Pronounced by the Hon'ble Supreme Court in Keshav Lal (Supra) and various Honorable High Courts, it is clear that if police investigated the non cognizable offence without the prior permission of the concerned Magistrate and subsequently filed the charge sheet then as per law it is not proper for the Court to take cognizance or to conduct the trial on that charge-sheet or to treat that charge sheet as complaint. So, this Court passes the following final order in the interest of Justice.

Final Order

The Proceeding against the accused person u/s 142 of G.P.Act is hereby dropped with liberty to prosecution to take such steps as it deems fit in accordance with law.

Ahemdabad

09/09/2023

Manojkumar Radheshyam Lalwani
Add. Chif Metropolitan Magistrate
Court no. 25.Ahmedabad.

GJ01124