

Order Below Exhibit-1

(1) This case is filed under The Gujarat Police Act for the violation of orders passed by the appropriate authority under the provision of the G.P. Act, 1951 (Here in after referred as The Act). The Act has been enacted for regulating the method of working throughout the state by the police and for the maintenance of public order. One of the purposes of The Act embedded in the preventive measures taken by police, such preventive measures are often spontaneous and requires arrest without warrant, otherwise without such power preventive measures will become infructuous. After the preventive measures are taken at when circumstances so require then the situation ripens into registration of a case. At this stage the scheme of the Act is also required to be looked into, it is clear from provisions of the Act that section 90A is declared cognizable through its sub clause (4) and section 118 through sub clause 1C and section 143-B thus whenever legislature intends to make a particular provision cognizable, the same is specifically made while rest are left undeclared.

(2). In the case of *State Of Gujarat v. Bhimji Manji and Ors.* reported in 1968 Cr.LJ 1013 Divisional Bench of Hon'ble High Court observed in para-3 that, "This is subject only to an enactment, if any, which regulates the manner or place of investigation, enquiry, trial or otherwise dealing with such offence. Thus, it appears that even when an investigation is to be made and an enquiry, trial or otherwise dealing with such offence. Thus, it appears the even when an investigation is to be made and an enquiry and a trial have to be held for offences against other laws, the Courts have to look to the provisions of the Code, unless appears that any special enactment in force at the material time makes a special provision the matter of dealing with such offences."

Further The Hon'ble High Court of Gujarat held in para 4 as under:

4. This will take us to a consideration of the relevant rules. The Rules are made by the Central Government in exercise of its emergency powers conferred by sec. 3. The Defence of India Act (No. 51 of 1962). Rule 125(9)(a) of the Rules, which is the material rule for our consideration, corresponds to rule 81(4) of the Defence of India Rules made under the Defence of India Act, 1939, with the only difference that in proviso to clause (a) of rule 125(9)(a) of the Rules in not to be found in the 19 clause Rules Rule 125(9)(a) of the Rules, is the punishing rule for contravention of an provision of rule 125 or of any order made under the rule. Rule 152 of the Rules which corresponds to rule 120 of the Defence of India Rules, 1939, deals with the general powers of any police officer to arrest without a warrant. It reads as under 152. General powers to arrest without warrant. Any police officer may arrest without warrant any person who is reasonably suspected of having committed or committing or of being about to commit a contravention of Rules 13, 19, 26, 31, 54, 64, 65, 66, 78, 80, 85, 88, 118, 121, 122, 129, 131, 134, 140, 141 or 142 or of an order or direction made or given under any of the said rules..

It is only in respect of the stated rules that a provision is made for the arrest of the offenders without a warrant. The power is given to any police officer. A close analysis or examination of the relevant rules referred to in Rule 152 will go to show that save and except for rule 26 of the Rules, all other rules referred to therein are punishable with imprisonment of less than three years. Rules 13, 19, 31, 57, 64, 65, 66, 78, 80, 118, 121, 122, 131, and 141 are all rules which provide that the contravention of any order or direction made or given thereunder shall be punishable with imprisonment for a term which may extend to six months or with fine or with both. It appears from the scheme of the Rules that a sub-rule of each relevant rule confers a power upon the Government or the appropriate authority to make an order or

give a particular direction or injunction and another sub-rule of the same rule provides for the punishment. These rules, which have been examined by us, show that the contravention of the order, direction or injunction made or given under the said rules is made punishable for a lesser term of imprisonment and these offences appear relatively to be minor offences. Sub-rule (3) of rule 88 of the Rules makes the contravention of the order made under sub-rule (1) punishable with imprisonment which may extend to one year and also to a fine. Rules 129, 140 and 142 prescribe the maximum imprisonment awardable for the contravention of the relevant orders made under the rules as two years imprisonment. Sub-rule (2) of rule 26, which is one of the rules for which special provision is made in Rule 152, provides that the contravention of any order made under sub-rule (1) shall be punishable with imprisonment for a term which may extend to five years or fine or with both. Rule 26 is the only rule, the contravention whereof is made punishable for a higher term of imprisonment. It will thus appear that all the rules mentioned in rule 152 except rule 26 have relation relatively to minor offences. The said offences fall within the category of non-cognizable offences as defined in clause (n) of sub-sec. (1) of sec. 4 of the Code read with relevant entry in Schedule I thereof. The part of Schedule II of the Code which has relation to offences against other laws provides that if the offence is punishable with imprisonment for one year and upwards, but less than three years, the police shall not arrest without a warrant. The rules referred to in rule 152 except rule 26 thus relate to non-cognizable offences. An examination of some other rules contained in the Rules will reveal that contravention of orders made under rules 6, 8, 10, 12, 16, 21 and 22 will constitute relatively major offences, made punishable with imprisonment for a term which may extend to three years or with fine or with both. These are not the rules for which any provision is made in rule 152. Rules 14, 15, 25, 28, 33, 38 and 39 make provision for punishment of contravention of the sub-rule embodied in the said rules. The punishment provided for the contravention of any order made under the relevant sub-rule is imprisonment which may extend to five years or with fine or with both. Then are the rules 9, 11 and 32 which provide for more serious offences and the punishment provided is imprisonment for a term which may extend to seven years. Rule 152 which confers general power on a police officer to arrest, without warrant, persons contravening the stated rules or any order or direction made or given under the said rules does not include these rules which provide for higher punishment. It will thus appear that rule 152 has been enacted for a special purpose, viz to invest police officers with powers to arrest without a warrant any person who is reasonably suspected of having committed or of being about to commit a contravention of the rules specifically mentioned therein, which appear to provide for relatively minor offences, punishable with an imprisonment for less than three years and this appears to be with a view to clothe police officers with larger powers to meet emergent conditions. Thus, it can be said that rule 152 is one of the powers of police officers to arrest persons without warrant in respect of all offences considered as cognizable offences as defined in the Code. To say so would mean that major offences under the various Rules aforesaid, the contravention whereof is made punishable with higher terms of imprisonment under the Rules, will have to be treated as non-cognizable offences and minor ones as cognizable offences. This would create an anomalous position. In our view, such could not have been the legislative intent.

(3) There is no specific provision provided for the trial in the Gujarat Police Act 1951. Therefore, in that circumstance, sec. of the Code of Criminal Procedure, 1973 is applicable and it is clear from section of the code, when ever no specific provision provided in special or local act, the investigation, trial and inquiry will be conducted according to provisions of CPC.

(4). Similarly in Gujarat Police Act, there are certain provisions for instance Section

62,70,71,72,73,79,80,81 where in a police offices has been given the power to arrest but where it is written that for violation of these uns, die offence is made cognizable. The power to arrest seems to be given to the police office to meet emergent conditions but the power to arrest it self does not convert ane copsable offesice inta cognizable in this Act general power of anest is given to police ot limited power of arrest under different circumstances is given the under secum 62 if extenment neder is passed against any person under section 55.56,57 and 57-A and that person (als to remove leself or hurving removed but enters with out permistan or beeches condition of permission then that perseees be arrested and removed in police custody to such place outside the area as that autherny may in each case prescribed. Similarly lined power of anest is given to police in section 79 of this Act when any offence punishable under section 117 or section 125 or section 130 or sub section (1.(IV) or (V) of section 731 or C1 () of section 135 in respect of contradiction of any order made in section 3 or 40 if committed in the presence of police. I means if offence is not commined in the presence of police then police has to power to arrest with out warrant. Similar power of arrest like in section 42 Cr.PC is given to police ander section 81 where if non cognizable offence is commined in the presence of police then police power to arrest with out warrant. If we correlair power of police to arrest witout warrant as cognizable offence then it means if non cognizable offence if commed in the presence of police then die offence becomes cognizable one and police get the power to investigate the non cognizable offence with out the permission of concerned magiorate Legislation specifically in schedule part I make the offences in IPC as cognizable or non cognizable, bailable or non-bailable and for other laws clearly made the provision in schedule 1 part II that if punishment prescribed by law is for less than three years or fine or wah both then the offence is non-cognizable one.

(5) From these provisions it is therefore, clear that whenever the Legislatare wants to give power to the police officers to effect an anest of a person or to investigate to an offence falling under any of the provisions of The Act, they have accordingly so provided, but so far as section 142 of The Act is concerned, there is no such reference is given to investigate the offence without prior permission of the competem Magistrate. Further the offence cannot be said to be cognizable, only because a power is conferred to amest any person committing such offence, without warrant. Section 142 of The Act does not specifically prescribe, whether the offeece is cognizable or non-cognizable and therefore, in the absence of any such specific reference therein, in order to determine as to whether an offence under section 142 of The Act is cognizable or non-cognizable, one has to fall bock upon the definition contained under section 2(c) and 200 read with part 11 of the First Schedule of the Criminal Procedure Code. The maximus punishment provided for offence punishable under sec.142 is two years. Then foie conjaiait reading of schedule-1 pan-11 of the Code and section 142 of G.P. Act ade or offence sin cognizable and bailable. Now the question arises in non-cognizable offence which of the provision of the Criminal Procedure Code would govern the investigation in the cases like the present. When the offence is non cognizable then Polic equired to investigate the offence with che permission of the count and as per secam 15(2) at CPC (2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such rase or commit the case for tnal. **"It is clear from the provisit, Non Cognizable uffence is required to be investigated after the order of the Magistrate having power in try such case.**

(6) In Keshav Lal Thakur v. Sute of Bihar, 1996(11) SCC 357 Honourable Supreme Court of India held as under:-

We need not go into the question whether in the facts of the imtait case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate to the offence in question not the Chief Judicial Magistram to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under Section 31 of the Act is

non cognizable and therefore the police could not have registered a case for such an offence under Section 154 Cr.P.C. of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 25 (2) Cr.P.C. but, admittedly, no such order was passed in the instant case. This necessarily means that neither the police could investigate into the offence in question nor submit a report in which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the proviso to Section 2 (d) Cr.P.C., which defines complaint, the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a complaint of the police officer concerned, but that explanation will not be available to the prosecution here as that [5:00 pm, 17/02/2022] Brijesh Sonara: related to a case where the police initiated investigation into a cognizable offence unlike the present one-but ultimately finds that only a non-cognizable offence has been made out. On the conclusions as above we allow this appeal and quash the impugned proceedings.

(7) That The Honorable High Court of Gujarat in the case of *Waghansha Va State of Gujarat* on 14th December, 2009 in Criminal Misc. Application No. 15226 of 2007 observed that even if the sections 79 and 80 of The Act empower the police officer to cause arrest of the petitioner, there is no provision provided under the Act or under the Criminal Procedure Code to show as to how the entire incident was investigated without permission of the Magistrate. Admittedly, the offence alleged was non-cognizable offence. Under section 155(2) of The Criminal Procedure Code, therefore no police officer could have investigated such an offence without order of Magistrate having power to try such a case

(8) In *MOIN BASHA KURNOOLI SO LATE HAJI ABDUL GAFOOR V/S STATE OF KARNATAKA*, 2014 Law Sun(Kar) 2048, Hon'ble Karnataka High Court observed in para 39 to 41 that Power to arrest without warrant in the offences where punishment prescribed is less than three years in Karnataka Police Act under different circumstances does not confer the power to investigate the offence to police without prior permission of the Magistrate. Further Hon'ble Kerala High Court in *Kumbumammed Vs. State of Kerala* in Cn.M.C. No. 702 of 2011 held, that as per explanation to section 2(d) of the Criminal Procedure Code the report of the police officer cannot be deemed as a complaint and police officer can not be deemed as a complainant because said explanation has no application to the case where non-cognizable offence alone is alleged at the ab initio of investigation

(9) Gujarat Police Act is made for training public peace and order and power in arrest is given to police for urgent action so that for every breach of order police has not to rush to concerned Magistrate for taking permission to arrest. It is the principle of interpretation of Statute that when the Statute itself expressly provides express provisions then it is to be read as it is. In GP Act, only three offences are made cognizable. **Therefore, except Section 90(A), 118 and 143B, the other offences are deemed to be non cognizable:**

(10) It is established that in cognizable case police has power to arrest and investigate without the permission of concerned magistrate and subsequently police files charge-sheet under section 173 of Cr.P.C. but if power to arrest under different circumstances is given under any law then as per above discussion it does not mean that police automatically get the power to investigate the offence without prior permission of the concerned Magistrate. In the present case that there is no confusion is the mind of a investigating Officer that he is going to investigate only offence of section 142 G.P. Act and such investigation is carried out by the police in respect of Non-cognizable offence without the prior permission of concerned Magistrate under section 155(2) of Criminal Procedure code, which is illegal and bad in law.

(11). In the present case also, police has investigated the offence without the permission of this court. It is clear from record that no permission is sought for by the police for the investigation. Therefore, chargesheet filed by the police against accused is illegal in the eye of law. Considering the above situation, when the chargesheet is illegal in the eye of law, in that circumstances principle of nullity" will apply and all the subsequent proceedings are 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 deems fit in accordance with law.

Date:- 09-03-2019
Place:- Ahmedabad

Add Chief Metro.Magistrate
Court No.14, Ahemdabad