

Criminal Case No.792 of 2023

ORDER BELOW EXHIBIT- 01

- 1) As the police has filed a charge-sheet having offence under section 185 of The Motor Vehicles Act, 1988 against the present accused. It is necessary to have it look from various aspects.
- 2) **Legal Provisions.**
 - **Section 185 of The Motor Vehicles Act, 1988 deals with Driving by a drunken person or by a person under the influence of drugs**—Whoever, while driving, or attempting to drive, a motor vehicle,--
 - (a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, or in any other test including a laboratory test, or
 - (b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle.shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine of ten thousand rupees, or with both; and for a second or subsequent offence, with imprisonment for term which may extend to two years, or with fine of fifteen thousand rupees, or with both.
 - **Section 155 of The Criminal Procedure Code deals with Information as to non-cognizable cases and investigation of such cases.**
 - (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.
 - (2) 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.
 - (3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.
 - (4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

3) **Scope, Cognizance & Jurisdiction.**

- **The Hon'ble High court in Mehaboob Koya Moideen Versus State, 2011 Cr.L.J. 2795 has observed that** “The above discussion leads me to the conclusion that cognizance taken by the learned Magistrate of offences punishable under Secs. 184 and 185 of the Code on a charge sheet submitted by the police officer after an investigation in violation of Sec. 155(2) of the Code is illegal and for reasons I have stated, the said charge sheet cannot also be deemed to be a complaint as defined under Sec.2(d) of the Code. Cognizance taken being illegal is liable to be quashed.”
- **The Hon'ble Delhi High Court in Narain Singh Versus The State, 1986 (2) Crimes 535, 30 (1986) DLT 118 has observed that** “Its perusal would show that an offence under any law other than Indian Penal Code would be non-cognizable if it is punishable with imprisonment for less than three years or with fine only.”

4) **Facts of the Present Case.**

The case of the prosecution is that the accused driven his vehicle under his possession in state of intoxication and thereby, he committed the crime which attracted the registration of FIR for offence under Section 185 of the Motor Vehicles Act, 1988 and finally resulted into the charge-sheet on hand. However, as discussed above, offence under Section 185 of the Motor Vehicles Act, 1988, being a non-cognizable case, investigation cannot be carried out without obtaining order of a Magistrate having power to try such case or commit the case for trial as per requirement of Section 155 (2) of The Cr.P.C. Thus, there is clear bar of law on taking cognizance of the case which is filed under Section 185 of the Motor Vehicles Act, 1988 and in which investigation carried out without obtaining order of a Magistrate.

5) **Conclusion.**

In view of the Section 155 of Cr.P.C., Observations made by the Hon'ble High Courts in various cases and the fact & record of the case on hand, it is very much clear that, this being a non-cognizable case and investigation is carried out without obtaining order of a Magistrate having power to try such case or commit the case for trial as per mandatory requirement of Section 155 (2) of The Cr.P.C and therefore no court can take cognizance of the same. If cognizance is taken by the court, that proceeding becomes nothing but void ab initio. Thus, there is no rational behind continue this proceedings and wasting precious time of the court in this futile litigation. Therefore, in the interest of justice this proceeding is

required to be stopped under section 258 of the Cr.P.C. Therefore, considering all the above discussion of law and fact, following orders are passed in the interest of justice:

ORDER

1. The proceeding against the accused under Section 185 of the Motor Vehicles Act, 1988 is stopped under section 258 of the Criminal procedure code.
2. If any interim order is passed regarding muddamal, that order is hereby continued unconditionally. If no interim order is passed, order for muddamal shall be passed after necessary inquiry.

Pronounced in open Court today, on this 11th day of February, 2023.

Date: 11/02/2023
Dahod

S.G.Sheikh
3rd Add. Civil Judge & J.M.F.C.,
Dahod
GJ01615