

GJVD020185502019

CC - 15802/2019

ORDER BELOW EXHIBIT - 1
(UNDER SECTION 258 OF Cr.P.C.)

1. The present case has been taken on board today in Special Sitting of Magistrate in Lok Adalat as per the letter of Hon'ble Gujarat State Legal Services Authority for conducting Special Sitting of Magistrates in National Lok Adalat.
2. In the present case, the charge sheet has been filed against the accused for commission of offence under section 66(1)(b)/ 66(b) and 85 / 85(1) / 85(1)(3) of Gujarat Prohibition Act (hereinafter referred to as "the Act"). On submission of charge sheet, the Court issued process upon the accused but the process could not be served upon the accused. The accused has been charge sheeted for offences under section 66(1)(b) and 85 / 85(1) / 85(1)(3) of the Act. The present case has been registered after new amendment which came into force in December, 2016. After new amendment, section 85 has been amended which is reframed below:
(1)Whoever, in any street, thoroughfare, public place, in any place to which the public have or are permitted to have access, is drunk and creates nuisance, takes up a quarrel with any person, uses foul or abusing language, indulges in fight with others, misbehaves with any woman or behaves obscenely, shall, on conviction, be punished with imprisonment for a term which may extend to three years but which shall not be less than one year and with fine.
3. In view the above provision of law, there is no such allegation in present complaint which attracts section 85 / 85(1) / 85(1)(3) of the Act. Hence, the accused is required to be discharged under section 85 / 85(1) / 85(1)(3) of the Act and can be tried only for the offence punishable under section 66(1)(b) / 66(b)of the Act.
4. After submission of the charge sheet, the Court issued process upon the accused continuously but the accused has not remained present in the Court. The process serving agency/Police has not been able to produce the accused in the Court even after continuous attempts to serve process upon the accused. It is evident from the record of the case that the present case is on service of process upon the accused. The prosecution agency has not been able to present accused in the Court.

5. Hon'ble High Court of Bombay in **Mulchand Motilal Raka v. State of Maharashtra** has laid down that "Section 258 of the Code which empowers to stop the proceedings in certain cases is intended to meet with certain situations, where the presence of accused cannot be secured or presence of any important witness cannot be secured by the prosecution, which is necessary for the trial of the case. Therefore, where the Magistrate does not find it possible to dispose of the matter by adopting normal procedure contemplated by the Code for one reason or other as hereinabove stated, in such situation it would be open to the Magistrate to stop further proceedings of the case. Section 258 of the Code can be resorted to where the special or unusual circumstances exist, such as non-appearance of the accused before the Court for considerable time or of the important witness of the prosecution, which make it difficult or decide the case on merit, without any hindrance, in the normal manner, as per the procedure under the Code, the provisions of section 258 of the Code can be resorted to."
6. Taking into consideration the ratio laid down by Hon'ble the Supreme Court of India in **P.R. Rao v. State of Karnataka, 2002 (2) GLR 1549** and the ratio laid down by Hon'ble High Court of Bombay, the Court does not find it fit to grant more time to the prosecution agency. It seems to this Court that no reasonable reasons are there to proceed with the trial as the prosecution has miserably failed in their duty to mark the presence of the accused before this Court. Thus, left with no hope of progress of present case in the near future, the proceeding is required to be stopped under section 258 read with section 300(5) of Code of Criminal Procedure. Hence, in the large interest of justice, this Court passes following order:

ORDER

1. The proceedings against the accused is hereby stopped under section 258 r/w section 300(5) of Code of Criminal Procedure, 1973 and the accused is hereby discharged from the above charge.
2. The bail-bond of the accused person/persons stands cancelled and the surety is hereby discharged.
3. Cash bail-bond, if any, is hereby forfeited and money of cash bond be deposited in government fund.

Pronounced in Open Court today on 09.09.2023 in Special Sitting in Lok Adalat.

Date: 09.09.2023
Place: Vadodara

(**N.K.MAKWANA**)
2nd Addl. Civil Judge and J.M.F.C.
Vadodara
Code No. GJ01412