

In the Court of 3rd Additional Civil Judge and JMFC, Bhavnagar:

Order below Ex-1:

CC NO- 7125/17

Complainant raise offence against accused under the Prohibition Act, 1949 Sec 66(1)(b) and 85(1)(3). The said offence is by act summary. By looking to the charge against the accused it is necessary to examine the chargesheet. If offence is made out then only process can be issued against accused then and cognizance can be taken.

While looking to the provision of prohibition Act Sec 66(2) wherein if in blood there is alcohol more than 0.05 then and then offence can be made out. While looking to the blood test rule, Rule 4 states that the registered medical practitioner shall use a syringe for the collection of the blood of the person produced before him under the rule. The syringe shall be sterilized by putting in the boiling water before it is used for the aforesaid purpose. He shall clean with 1% aqueous solution of mercurchrome or gentian violet not containing alcohol or its solution the skin surface of that part of such person's body from which he intends to withdraw the blood. No alcohol shall be touched at any stage while withdrawing blood from the body of the person. He shall withdraw not less than 5 c.c. of venous blood in the syringe from the body of the person. The blood collected in the syringe shall then be transferred into a phial containing anticoagulant and preservative and the phial shall then be shaken vigorously to dissolve the anticoagulant and preservative in the blood. The phial shall be labelled and its cap sealed by means of sealing wax with the official seal or the monogram of the registered medical practitioner.

The sample blood collected in the phial in the manner stated in sub rule(1) shall be forwarded for the testing officer either by post or with a special messenger so as to reach him within seven days from the date of its collection. It shall be accompanied by a forwarding letter in form "B" which shall bear a facsimile of the seal or monogram used for sealing the phial of the sample blood.

While looking to the whole chargesheet not attached the F.S.L report along with the chargesheet. Hence looking to the Chargesheet it seems that whether accused's blood shows more than 0.05% of alcohol or not that can not be identified. Hence its followed or not the Blood test rule 4(2) that can not be identified.

Blood test rule -4 is mandatory provision. Wherein Honble Gujrat High Court mention in the judgement of Bihari V/s Gujrat State, if After taking blood if not sent in 7 days, the said case does not fall under the punishment. Hence for the just fulfilling the Procedure matter should not run.

Further the Judgement of Satish Mahera V/S Delhi Administration also states that Bombay Medical examination blood test rule 1959 rule 4 and Bombay prohibition Sec 66(2), Absence of FSL report its not seems proper to take the cognizance and proceed the matter.

Hence looking to the above observation I pass the following order:

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Case against the accused under the provision of Sec 66(1)(b), 85(1)(3) be dispose while following the provision of 258 of CRPC. Muddamal can be dispose after Appeal.

Order to be declared in the open court dated as on- 23 - January- 2018.

Date:- 23/01/2018

I.M.Shaikh
3rd Additional Civil Judge & JMFC