

Order Below Exhibit-1

(1) This case is filed under The Gujarat Police Act for the violation of orders passed by 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 through out the state by the police and for the maintenance of public order. One of the purpose of The Act is embedded in the preventive measures taken by police, such preventive measures are often spontaneous and requires arrest without warrant, otherwise without such power the preventive measures will become infructuous. After the preventive measures are taken and when circumstances so require then the situation ripes into registration of case. At this stage, the scheme of the Act is also required to be looked into, it clear from provisions of the act that section 90A is declared cognizable through its sub clause (4) and section 118 through its sub clause 1C and section 143-B thus whenever legislature intends to make 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.L.J.156, 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 that 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 it appears that any special enactment in force at the material time makes a special provision in the matter of dealing with such offences.

(3) That The Honorable High Court of Gujarat in the case of Waghari Vs State of Gujarat on 14th December,2009 in Criminal Misc. Application No. 15226 of 2007 observed that even if the section 79 and 80 of The Act empower the police officer to cause arrest of the petitioner, there is no provision pointed out either in the 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.

(4) In MOIN BASHA KURNOOLI S/O LATE HAJI ABDUL GAFOOR V/S STATE OF KARNATAKA, 2014 Law Suit(Kar) 2048, Hon'ble Karnatka High observed in para 39 to 41 that Power to arrest with out warrant in the offences where punishment prescribed is less then three years in Karnatka Police Act under different circumstances does not confer the power to investigate the offence to police with out prior permission of the Magistrate. Further Honourable Kerla High Court in Kunhumammed Vs. State of Kerala in Cri.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.

(5) Gujarat Police Act is made for maintaining public peace and order and power to 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 it self expressly provides express provisions then it is to be read as it is. In G.P. Act, only three offences are made cognizable. Therefore, except Section 90(A),118 and 143(B), the other offences are deemed to be non cognizable.

(6) It is established that in cognizable case police has power to arrest and investigate with out 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 with out prior permission of the concerned Magistrate. In the present case that there is no confusion in the mind of a Investigation Officer that he is going to investigate only offence of section 135 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.

(7) 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 chargesheet 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 135 of G.P.Act is hereby dropped u/s 258 of Cr.P.C with liberty to prosecution to take such steps as he deems fit in accordance with law. It is further directed to police officer to take necessary action for disposal of muddamal as per law.

Date:30/09/2021
Surat

(R.M.Chavda)
J.M.F.C.(3rd Court)
Judge Code:GJ01524