

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) 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.

(3) 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.

(4) 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 142 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: 11/02/2023
Surat

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