

Order below Exhibit-1

The matter was taken up during the special sitting held on today. The prosecution has filed the present charge-sheet against the accused under section 85(1) of the Gujarat Prohibition Act (hereinafter referred as “the Act”). Processes have been issued to the accused person on various occasions but they returned with an endorsement that the accused could not be found at the address. Therefore it seems that his personal presence cannot be procured without an amount of delay, expense or inconvenience. The instant case being a warrant triable one, cannot be simply dismissed for want of accused. Such cases needs to be proceeded as per Section 299 of CrPC, and for the said purpose, this Court has gone through the material furnished alongwith the chargesheet to reckon on the point that is there any prima facie incriminating material against the accused, *qua* Section 85(1) of the Act, on the record of the case. It transpires from the record that the accused was found consuming liquor in public place and based on this, an FIR was registered against the accused and thereafter charge sheet was filed. On perusing the record, it transpires that in the charge-sheet no where it is mentioned that accused was creating nuisance/ quarreling with any person/used foul or abusive language/indulged in fight with others/misbehaved with any woman or behaved obscenely. Mere alleging that accused was uttering nonsense on road does not make him liable for the offence under section 85(1) of the Act. The IO is bound to specifically allege the act of the accused when he was allegedly found drunk. Hence, no case against the accused *qua* Section 85(1) of the Act has been made out, which if unrebutted would warrant his conviction. The objection taken by the Ld. APP on this point has also been taken into consideration.

Thus, under these circumstances, the Court is inclined to pass the following order, in the interest of justice:

Order

- i. The accused is hereby discharged under section 239 CrPC from the offence under section 85(1) of Gujarat Prohibition Act .
- ii. Personal bond and surety bond of the accused, if any, also stands discharged.

Announced in open Court.
08/12/2018

(Himanshu Choudhary)
3rd ACJ & JMFC, Surat
Judge Code: GJ01180