

Order Below Exh.1

- 1) Read the chargesheet & police papers. In this case the investigation officer has filed the chargesheet against the accused for the offence of MV act s.185 & Prohi. Sec.66.1.B. The important question that needs addressing here is whether this Court can take cognizance of above offences?
- 2) A bare perusal of Section 185 of Motor Vehicles Act, 1988 would indicate that the penal provision for this offence has been imprisonment upto six months or with fine upto rupees ten thousand or with both for the first offence. Prohi. Act. Sec.66.1.B punishment 6 months & fine. In all offences, the act gives power to police to arrest the accused, but in the entire Act nowhere specifies that the offences are cognizable offences. In this scenario Part I of First Schedule of B.N.S.S.,2023 would squarely apply which would make the offences bailable and non cognizable offences. Since the provisions of law cited above make the offences non cognizable, it is sinequanon for the concerned investigating officer to seek permission of jurisdictional Court in compliance of Sec. Sec.174(2) of Bharatiya Nagrik Suraksha Sanhita, 2023 before commencement of any investigation in the alleged offence.
- 3) In the case at hand, it is apparent that a charge sheet has been filed for the above offences and the case papers, nowhere indicate that the provisions u/s. Sec.174(2) of Bharatiya Nagrik Suraksha Sanhita, 2023 have been complied with. In such circumstances, this Court would be unable to take any cognizance on the chargesheet filed before this Court. This Court would also go a step further and say that cognizance has not been taken, the proceedings are liable to be dropped for want of compliance of Sec.174(2) of Bharatiya Nagrik

Suraksha Sanhita, 2023. For this proposition, this Court relies on the judgement of **Rupan Deol Bajaj & anr. v. Kanwar Pal Singh Gill & anr. – AIR 1996 SC 309** wherein it has been held that the investigation of a non cognizable offence by the police without the permission of the competent Magistrate is illegal, not curable and contrary to the provisions of this section.

- 4) This Court also relies on the judgement of Hon'ble Kerala High Court in the case of **Sagimon @ Prakash v. State of Kerala – 2014 CrLJ 4657 (Ker)** wherein a similar question had come before the Hon'ble Court for consideration. In the said case, it was held *“Of course, it is true that Section 202 of the motor vehicles act provides that a police officer in uniform may arrest without warrant, any person who in his presence commits an offence punishable under Section 184 or Section 185 or Section 197 of the motor vehicles Act. This does not mean that the offence is made cognizable. This is only a special power given to arrest, but the offence as such is not made cognizable. This position is well settled by this Court in Mehaboob V. State. When the offence is not cognizable, the police officer is not empowered to register FIR under Section 173 of B.N.S.S. He will have to follow the procedure prescribed under Section 174 of B.N.S.S. Section 174 (2) B.N.S.S. contains a prohibition that no police officer shall investigate a non cognizable case without an order of the Magistrate having power to try such a case or commit the case for trial. But here no such permission or order was obtained by the Sub Inspector of Police before registering FIR or before proceeding for investigation. Much discussion is not required to find that the whole prosecution in this case is unauthorized and illegal. Without complying with the necessary procedure prescribed under Sec.174(2) of Bharatiya Nagrik Suraksha Sanhita, 2023, the Sub Inspector of Police straight away registered an FIR in this case. Without obtaining*

permission or orders he conducted investigation and submitted a final report, as is done in a case of cognizable offence. No doubt the whole procedure is illegal.”

- 5) Keeping in view the detailed discussion above, it clearly comes on record that taking cognizance in the alleged offences or adjudicating this case would amount to illegality as all the offences are non cognizable offences and the mandatory requirement under Sec.174(2) of Bharatiya Nagrik Suraksha Sanhita, 2023 has not been complied with. I therefore pass the following order in the wider interest of justice.

ORDER

- The proceeding against the accused is hereby dropped without the effect as to acquittal or discharge of the accused with a liberty to the prosecution to undertake necessary proceedings as per the provisions of law.
- Investigating officer is directed to return the Muddamal vehicle detained, if any, to its owner after due verification of ownership.

Pronounced in Special Sitting today on 08th, March in the year of 2025.

Dt.08/03/2025

Place: Rajkot

(J.J.DAVE)
JUDICIAL MAGISTRATE FIRST CLASS(MAIN),
RAJKOT.
GJ01532