



2025:KER:22425

Crl.M.C.No.3611/2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

TUESDAY, THE 18TH DAY OF MARCH 2025 / 27TH PHALGUNA, 1946

CRL.MC NO. 3611 OF 2019

AGAINST ST NO.841 OF 2019 OF JUDICIAL MAGISTRATE OF FIRST
CLASS, MAVELIKKARA

PETITIONER/ACCUSED:

BENNY MON,
AGED 49 YEARS
S/O.VISWAMBARAN, KOCHUMANDATHIL HOUSE, KOTTARAKAVU
MURI, MAVELIKKARA, ALAPPUZHA DISTRICT.

BY ADVS.
P.VIJAYA BHANU (SR.)
M.REVIKRISHNAN
AJEESH K.SASI
P.M.RAFIQ
THOMAS J.ANAKKALLUNKAL
V.C.SARATH
VIPIN NARAYAN
POOJA PANKAJ

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031

BY SRI.SANGEETHARAJ.N.R, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
10.03.2025, THE COURT ON 18.03.2025 PASSED THE FOLLOWING:

**"CR"****ORDER**

"Drunken driving has become a menace to our society. Every day drunken driving results in accidents and several human lives are lost, pedestrians in many of our cities are not safe. Late night parties among urban elite have now become a way of life followed by drunken driving. Alcohol consumption impairs consciousness and vision and it becomes impossible to judge accurately how far away the objects are. When depth perception deteriorates, eye muscles lose their precision causing inability to focus on the objects. Further, in more unfavourable conditions like fog, mist, rain, etc., whether it is night or day, it can reduce the visibility of an object to the point of being below the limit of discernibility. In short, alcohol leads to loss of coordination, poor judgment, slowing down of reflexes and distortion of vision."

[State v. Sanjeev Nanda, (2012) 8 SCC 450]

2. The above observation of the Apex Court, though faded in the memory lanes of the past, often crops up as a reminder, or rather an eye-opener, whenever a mishap caused due to drunken driving comes up for consideration before a court of law in India. But unfortunately, the law enforcing agencies, in many cases of drunken-driving, are not diligent enough to stick on to the procedural requirements for a successful prosecution. Here is a case where such a lapse on the part



of the investigating agency has its cost on the escape scot-free of an offender, who is alleged to have driven a motor car with alcohol content amounting to 121 mg per 100 ml in his blood.

3. The petitioner is the accused in S.T.No.841/2019 on the files of the Judicial First Class Magistrate Court, Mavelikkara. The offences alleged against him are under Section 279 of the Indian Penal Code, 1860(*in short, 'IPC'*) and Section 185 of the Motor Vehicles Act, 1988(*in short, 'MV Act'*). He seeks to quash the proceedings in the said case on the grounds of procedural irregularities on the part of the investigating agency.

4. The prosecution case is that on 28.04.2019, at about 7:30 p.m, the accused/petitioner was found to have been driving a motor car under the influence of alcohol, in a rash and negligent manner, likely to endanger human life, through Mavelikkara-Kuttitheruvu public road. The Sub Inspector of Police, Mavelikkara, and his team are said to have intercepted the vehicle and subjected the petitioner to alcometer test, in which it was found that the alcohol content in his blood was 121 mg per 100 ml. The petitioner/accused was arrested on the spot and taken into custody. However, he was not subjected to the laboratory test as required under Section 204 of the MV Act. Instead,



it appears that the petitioner was released on bail. Later on, the Sub Inspector of Police, Mavelikkara, filed a final report before the learned Magistrate alleging the commission of offence under Section 279 IPC and Section 185 of the MV Act.

5. In the present petition, the petitioner would contend that the prosecution initiated against him is bad in the eye of law due to the procedural non-compliance of the mandatory requirements of the statute. It is also stated that the offence under Section 279 IPC has no independent existence in the facts and circumstances of the case, when it is found that Section 185 of the MV Act cannot be invoked due to procedural infraction.

6. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State of Kerala.

7. The crime involved in this case is alleged to have been committed on 28.04.2019, that is, before the amendment made to Section 185 of the Motor Vehicles Act vide Act 32 of 2019, came into force. As the law which stands on 28.04.2019, Section 185(a) of the MV Act mandated the detection of alcohol content in the blood of the offender as exceeding 30 mg per 100 ml through a breath analyser test. As far as the present case is concerned, the prosecution records



would reveal that the petitioner was subjected to breath analyser test immediately after his apprehension, and it was found that his blood contained alcohol content at the rate of 121 mg per 100 ml. Therefore, the procedural requirement of Section 185(a) as it existed at the time of commission of the crime, has been fulfilled in the present case. Had it been a case where the Investigating Officer proceeded with the matter in the same manner as he does while dealing with any other non-cognizable offence, and did not venture to arrest the petitioner, then the above breath-analyzer test result alone was sufficient to establish the offence under Section 185 of the M.V.Act. Blood test of the offender is not a mandatory requirement if there is no arrest pursuant to him being booked for the offence under Section 185 of the M.V.Act after a breath-analyzer test. But the position is different if there is arrest of the accused after subjecting him to breath-analyzer test. It is pertinent to note that, in the present case, the Investigating Officer had resorted to the arrest of the petitioner in exercise of his powers under Section 202 of the MV Act. That being so, it is incumbent upon the Investigating Officer to comply with the procedural mandate of the proviso to the aforesaid Section. As per the proviso to Section 202 of the MV Act, any person



arrested by the police officer in uniform, in exercise of the powers under the said Section, shall subject the arrestee to medical examination as provided under Sections 203 and 204, by a registered Medical Practitioner within two hours from the time of arrest. The proviso further mandates the release of the offender from custody in the event of failure to comply with the above requirement. As far as the present case is concerned, the petitioner was subjected to breath analyser test by the Investigating Officer. However, after his arrest, he was not subjected to the laboratory test by a registered Medical Practitioner as required under Section 204 of the MV Act. The non-compliance of the above requirement under the proviso to Section 202 of the MV Act would vitiate the prosecution initiated against him under Section 185 of the MV Act. It is pertinent to note that the petitioner, after his arrest, was released on bail by the Investigating Officer. That means, the aforesaid release of the petitioner was not an abstract release in accordance with the proviso to Section 202 of the MV Act, due to the inability to subject him to the laboratory test under Section 204 of the MV Act. On the other hand, he was released on bail in accordance with the routine procedures of law as being followed in the case of bailable offences. Thus, it is



apparent that the investigating agency did not follow the mandatory requirements of the proviso to Section 202 of the MV Act after resorting to the arrest of the petitioner in exercise of the powers conferred under the said Section. When the Police Officer in uniform, after resorting to arrest of an accused booked for drunken-driving, in exercise of the powers under Section 202 of the M.V.Act, decides to release him unconditionally or subject to provisions of bail, without opting for laboratory test as required under the proviso to the said Section, then it has to be taken that the laboratory test was not done since the Police Officer was not sure of getting the test results establishing the requirements of Section 185 of the M.V.Act. In such a situation, where the Investigating Agency omits to follow the procedural mandate of law which would have established the offence alleged against the accused, the presumption has to be drawn in favour of the accused. That being so, the prosecution initiated against the petitioner for the offence under Section 185 of the MV Act cannot survive the scrutiny of law.

8. It is pertinent to note that the petitioner has been booked not only for drunken driving, but also for rash and negligent driving as envisaged under Section 279 IPC. The learned counsel for the



petitioner would argue that the allegation of rash and negligent driving has its basis on driving under the influence of alcohol, and hence it is not possible to prosecute the petitioner for the offence under Section 279 IPC, when it is found that the prosecution under Section 185 of the MV Act is not maintainable against him. I am not inclined to accept the above hypothesis canvassed by the learned counsel for the petitioner. This is because of the reason that the ingredients of the offence under Section 279 IPC are totally distinct from the essential requirements of Section 185 of the MV Act. The offence under Section 279 IPC is attracted whenever it is shown that a person was found to have driven a vehicle on any public way in a manner so rash and negligent, as to endanger human life, or in a manner likely to cause hurt or injury to any person. The reason for such rash and negligent driving is immaterial as far as Section 279 IPC is concerned. The cause for rash and negligent driving by an offender can be drunkenness, sleeplessness, lack of concern about the safety of others, or even a feeling of egoistic thrill. But such cause never matters while deciding the question whether the offence under Section 279 IPC is attracted. Therefore, there is no basis for the argument that, since the rash and negligent driving in the present



case was the outcome of drunkenness, and since the offence relating to drunken driving is not brought out in the case, there cannot be a successful prosecution for Section 279 IPC as well.

9. As far as Section 185 of the MV Act is concerned, the offence of drunken driving as envisaged under Clause (a) of the said Section is attracted if it is shown that the driver was having alcohol content in his blood exceeding 30 mg per 100 ml. It does not matter whether due to the consumption of alcohol the offender was driving the vehicle in a rash and negligent manner or not. In other words, even if the vehicle was being driven by the offender in a perfect manner, the offence under Section 185(a) of MV Act is attracted if it is shown that the alcohol content in the blood of the offender exceeded 30 mg per 100 ml. The question whether there was rash and negligent driving is irrelevant for deciding whether an offender is guilty of an offence under Section 185(a) of the MV Act. Therefore, there is absolutely no merger of the ingredients of Section 279 IPC and Section 185 of the MV Act to hold that a finding against one of the aforesaid Sections would nullify the prosecution initiated under the other Section. In that view of the matter, the argument advanced by



the learned counsel for the petitioner on the above grounds, is totally unsustainable.

10. As far as the present case is concerned, the prosecution records, inclusive of the statements of witnesses, would reveal that the investigating agency had garnered sufficient materials for prosecuting the petitioner for the commission of offence under Section 279 IPC. Therefore, the prosecution against the petitioner cannot be quashed due to the sole reason that there is non-compliance of the procedural requirements for initiating prosecution under Section 185 of the MV Act. Needless to say that the prosecution against the petitioner has to continue in so far as it relates to Section 279 IPC.

In the result, the petition is allowed in part as follows:

- (i) The prosecution against the petitioner under Section 185 of the MV Act stands quashed.
- (ii) The learned Magistrate shall proceed with the case for the offence under Section 279 IPC booked against the petitioner.

(sd/-)

G. GIRISH, JUDGE



APPENDIX OF CRL.MC 3611/2019

PETITIONER ANNEXURES

- ANNEXURE A TRUE COPY OF THE FIR IN CRIME NO.692/2019 OF
MAVELIKKARA POLICE STATION, ALAPPUZHA
DISTRICT.
- ANNEXURE B TRUE COPY OF THE FINAL REPORT IN CRIME
NO.692/2019 OF MAVELIKKARA POLICE STATION,
ALAPPUZHA DISTRICT,
- ANNEXURE C TRUE COPY OF THE RC PARTICULARS PERTAINING TO
THE VEHICLE OF THE PETITIONER BEARING
REGISTRATION NUMBER KL-31-J-4546 WHICH SHOWS
THE SAME OT BE A RENAULT CAR RED IN COLOUR.
- ANNEXURE D TRUE COPY OF THE MAHAZAR PREPARED BY THE
POLICE FOR PURPORTEDLY SEIZING THE VEHICLE
STATE AFORE.
- ANNEXURE E TRUE COPY OF THE KYCHIET EVIDENCING RELEASE
OF THE VEHICLE TO THE PETITIONER