

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 08TH DAY OF JANUARY 2021 / 18TH Pousha, 1942

Cr1.MC.No.4820 OF 2020(B)

AGAINST THE ORDER/JUDGMENT IN CC 630/2020 OF JUDICIAL MAGISTRATE  
OF FIRST CLASS -I, KANNUR

CRIME NO.30/2020 OF Kannapuram Police Station , Kannur

PETITIONER/S:

MANOJ KUMAR K.  
AGED 51 YEARS  
S/O.RAMAN M, KODAKKRAN HOUSE, KADANNAPPALLY AMSOM AND  
DESOM, KANNUR DISTRICT

BY ADVS.  
SRI.I.V.PRAMOD  
SRI.K.V.SASIDHARAN  
SMT.SAIRA SOURAJ P.

RESPONDENT/S:

STATE OF KERALA,  
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM. KOCHI-682031

OTHER PRESENT:

SR.PP.AMJAD ALI

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
24.11.2020, THE COURT ON 08.01.2021 PASSED THE FOLLOWING:

**V.G.ARUN, J.**

-----  
**CRL.M.C.No. 4820 of 2020**  
-----

**Dated this the 8<sup>th</sup> day of January, 2021**

**O R D E R**

Petitioner is the accused in C.C.No.630 of 2020 on the files of the Judicial First Class Magistrate-I, Kannur. Based on the final report filed in Crime No.30 of 2020 of Kannapuram Police Station, the court took cognizance for the offences under Sections 279 and 337 of IPC and 185 of the Motor Vehicles Act. The prosecution allegation is that, at about 4 p.m. On 21.1.2020, the petitioner had driven his car in a rash and negligent manner so as to endanger human life and had dashed against another car, resulting in the driver and passenger of the other car sustaining injuries. The petitioner was arrested and subjected to medical examination, upon which the doctor opined that the petitioner smelled of alcohol.

2. The challenge in this CrI.M.C is primarily against inclusion of the offence under Section 185 of the M.V.Act. The challenge is based on the ground that the offence under Section 185 would be attracted only when alcohol content is detected through breath analyser test. It is contended that no such test having been conducted, the entire prosecution is illegal. Reliance is placed on the decision of this Court in

**Sagimon v. State of Kerala** [2014(3) KLT 782] and Annexure A3 order in CrI.M.C.No.5562 of 2019.

3. A perusal of the memo of evidence appended to the final report shows that the doctor's certificate is with regard to the injuries sustained by the petitioner and others as a result of the accident. No mention is made about breath analyser test or any other test conducted for the purpose of finding the alcohol content in the petitioner's blood. As per Section 185, whoever, while driving or attempting to drive a motor vehicle (a) has in his blood alcohol exceeding 30 mg per 100 ml of blood detected in a test by a breath analyser or in any other test including a laboratory test, is liable for punishment. Therefore, in order to attract the offence under Section 185(a), the accused should have been subjected to a breath analyser or any other test including a laboratory test and his blood found to contain alcohol exceeding 30 mg per 100 ml. The mandatory requirement of conducting a breath analyser test was elaborately dealt with by this Court in **Sagimon's case (supra)**. The ingredients of Section 185(a) was considered in Annexure 3 judgment also. Both decisions were rendered on interpretation of Section 185(a) prior to its amendment, which mandated detection of blood alcohol level through a breath analyser test. After the amendment, other tests, including laboratory test, can be resorted for determining alcohol content in blood. But, as far as the instant case is concerned, no such test is seen

to have been conducted. Being so, the petitioner cannot be prosecuted for the offence under Section 185 of the Motor Vehicles Act. Even though the prayer is to quash the further proceedings as a whole, I find no sustainable ground for doing so.

In the result, the CrI.M.C is allowed to the limited extent of quashing further proceedings against the petitioner under Section 185 of the Motor Vehicles Act. It is made clear that this order does not preclude the court from proceeding with the case for the other offences.

Sd/-  
**V.G.ARUN, JUDGE**

*vgs*

## APPENDIX

### PETITIONER'S/S EXHIBITS:

- ANNEXURE A1                      A TRUE COPY OF THE FINAL REPORT IN CRIME  
NO.30/2020 OF KANNAPURAM POLICE STATION,  
KANNUR DATED 8/3/2020
- ANNEXURE A2                      A MEDICAL CERTIFICATE IS ISSUED ON  
21.1.2020 FROM MARTIN DE PORRES HOSPITAL,  
CHERUKUNNU. MEDICAL CERTIFICATE ISSUED BY  
DR.ABOOBACKER, OF MARTIN DE PORRES  
HOSPITAL, CHERUKUNNU
- ANNEXURE A3                      A PHOTOCOPY OF THE ORDER IN  
CRL.M.CNO.5562/2019 DATED 4/11/2019 OF THIS  
HON'BLE COURT