

**Reserved On : 24/09/2025****Pronounced On : 01/10/2025****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL REVISION APPLICATION NO. 424 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE R. T. VACHHANI**

Approved for Reporting	Yes	No

MAHENDRASINH BALUSINH RAOL

Versus

STATE OF GUJARAT

Appearance:

MR NAYAN L GUPTA on behalf of MR ASHISH M DAGLI(2203) for the  
Applicant(s) No. 1

MR HK PATEL, APP for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE R. T. VACHHANI****CAV JUDGMENT**

1. The present Criminal Revision Application under Sections 397 read with 401 of the Code of Criminal Procedure, 1973 has been filed by the applicant – original accused challenging the judgment and order dated 13.09.2011 passed by the Additional Sessions Judge, City Civil and Sessions Court, Ahmedabad in Criminal Miscellaneous Application No.114 of 2010, whereby the appeal preferred by the applicant against the conviction order dated 26.02.2010 passed by the Metropolitan Magistrate, Court No.19, Ahmedabad in Criminal Case No.693 of 2004 came to be dismissed.

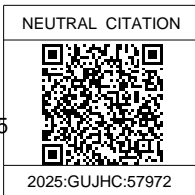


2. By the impugned order of the Metropolitan Magistrate, the applicant was convicted for the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act, 1949 (hereinafter referred to as “the Prohibition Act”) and sentenced to undergo simple imprisonment for three months and to pay fine of Rs.500/-, in default, to undergo further simple imprisonment for fifteen days. The applicant, however, was acquitted of the offence under Section 85(1)(3) of the Prohibition Act.

3. The brief facts of the case are as under:

3.1 On 14.12.2003 at about 02:55 hours, while the complainant – P.S.I. D.N. Patel along with other police staff was on night patrolling duty in the area of Vatva Police Station, they reached Pirana Toll Naka. At the said place, the applicant – Mahendrasinh Balusinh Raol, serving as a Police Constable and deputed on point duty along with another Constable Ramesh Khempi, was found to be in an inebriated condition. The applicant was unable to maintain his bodily posture properly, his speech was slurred, and a strong smell of alcohol was emanating from his mouth.

3.2 No pass or permit for consumption of alcohol was produced by the applicant. Panch witnesses were summoned, and a panchnama was prepared recording the applicant’s condition and the events, including the summoning of the panchas. Thereafter, the applicant was taken to Civil Hospital, Ahmedabad where Dr. Bhavin Shah examined him, collected his blood sample in



accordance with the provisions of the Bombay Prohibition (Medical Examination and Blood Test) Rules, 1959 (hereinafter referred to as “the Blood Test Rules”), and forwarded the same to the Forensic Science Laboratory (FSL), Gandhinagar for analysis.

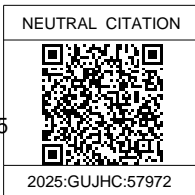
3.3. The FSL report revealed 0.0945% w/v ethyl alcohol in the blood sample, which exceeded the permissible limit of 0.05% as prescribed under the Explanation to Section 66(1)(b) of the Prohibition Act.

3.4 A complaint came to be lodged under Sections 66(1)(b) and 85(1)(3) of the Prohibition Act. Upon completion of investigation, charge-sheet was filed. The Metropolitan Magistrate framed charges and conducted the trial. The applicant was convicted under Section 66(1)(b) but acquitted under Section 85(1). The Court holding that while alcohol consumption was proved, the applicant was not intoxicated to the extent of losing self-control or behaving indecently in public. The appeal filed before the Additional Sessions Judge was dismissed, confirming both conviction and sentence.

4. Mr. Nayan L. Gupta, learned advocate appearing on behalf of Mr. Ashish M. Dagli, learned advocate for the applicant, has submitted that the courts below committed a serious error in convicting the applicant under Section 66(1)(b) of the Prohibition Act when he had been acquitted under Section 85(1)(3). He submitted that the evidence of Dr. Shah (P.W.3) clearly showed that the applicant was not under the influence of alcohol, rendering

the prosecution's case on consumption highly doubtful; that mandatory provisions of Rule 4 of the Blood Test Rules were not complied with, including sterilization of the syringe, addition and mixing of preservative, and ensuring no breach of the prescribed procedure; that there was unexplained delay in the chain of custody as the blood was drawn on 14.12.2003, received at FSL on 19.12.2003, and analyzed on 23.12.2003, without examining the Magistrate H.D. Dave or establishing safe custody in the interim, thereby rendering the FSL report unreliable; that the evidence was not properly considered, ignoring binding authorities like **Kalidas Dhulabhai Vaghela v. State, 1995 Supreme (Guj) 221**, on fatal irregularities in blood collection and **Jethaji Suvaji v. State, 1966 Supreme (Guj) 12**, on unexplained delay vitiating the prosecution case; and that the inferences drawn by the courts below regarding procedural compliance were unwarranted. Thus, it is urged that the conviction be quashed.

5. Learned APP has submitted that the prosecution has proved its case beyond reasonable doubt through consistent oral evidence of police witnesses, medical testimony of Dr. Shah confirming alcohol smell and proper blood collection procedure under Rule 4 of the Blood Test Rules, and the FSL report showing 0.0945% ethyl alcohol, which exceeded the statutory limit. It was submitted that acquittal under Section 85(1)(3) does not impact conviction under Section 66(1)(b), since both are distinct offences, the former requiring proof of public indecency or loss of self-control, which was not established, while the latter stands proved by blood



alcohol concentration. It is further contended that no breach of mandatory rules occurred, as disposable syringes were used thereby obviating sterilization, preservative was added and mixed, the sample reached FSL within seven days as required, and minor delays are not fatal without proof of tampering. The chain of custody was established through documentary evidence. Non-examination of messenger H.D. Dave caused no prejudice. The applicant's position as a police constable on duty aggravated the offence, warranting no leniency. It was urged that both courts below have properly appreciated the evidence, leaving no ground for interference in revision.

6. Heard learned advocates for the respective parties and perused the record and proceedings, including the oral and documentary evidence adduced before the trial court.

7. Police officers enjoy certain protections; however, they are not above the law. Being found intoxicated while on duty, undermines the integrity and efficiency of police personnel and, otherwise damages and erodes public trust in law enforcement agencies.

8. Reference may be made to **State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452**, wherein the Supreme Court emphasized that revisional powers are discretionary and ought to be exercised only to correct manifest errors or prevent failure of justice, not to substitute the revisional



court's view for that of subordinate courts unless the decision is patently illegal or perverse. Bearing these principles in mind, the impugned orders are being examined.

9. The Metropolitan Magistrate, Court No.19, Ahmedabad, after appreciating the evidence, held that the prosecution proved alcohol consumption through the FSL report (Exh.7) showing 0.0945% ethyl alcohol, exceeding the statutory limit of 0.05%, and consistent police testimonies regarding the applicant's inebriated state at the spot.

10. The Metropolitan Magistrate analyzed the oral evidence of P.W.12 (Gandaji Mangaji, Police Constable) corroborating discovery of the applicant in an unsteady condition; P.W.14 (Mohanbhai Pujabhai, Head Constable) narrating the transport to hospital; P.W.16 (Pratapsinh Rathod, Police Constable) confirming vehicle role and identification; P.W.17 (Rupsinh Devaji, A.S.I.) describing panchnama and slurred responses; P.W.18 (Dashrathbhai Nathubhai Patel, P.S.I.) narrating the sequence from detection to complaint; and P.W.20 (Parvatsinh Magnsinh, Investigating Officer) outlining the investigation. Though the panch witness turned hostile, the police witnesses were found reliable, with no motive for false implication, they being colleagues on duty.

11. As to Rule 4 of the Blood Test Rules, the Court observed that Dr. Shah (P.W.3) used disposable syringe and needle, cleaned the skin with gentian violet, drew blood, transferred it into a boiled and sterilized phial containing sodium fluoride



preservative, shook it, sealed and labeled it, and forwarded it with Form B bearing his monogram. No breach of mandatory provisions was found. The sample reached FSL within seven days without evidence of tampering.

12. The Court held that acquittal under Section 85(1)(3) was justified as the applicant had saluted the patrolling team, and Dr. Shah's Form A (Exh.10) showed normal gait, speech and pupils, indicating no loss of self-control. However, conviction under Section 66(1)(b) was independently sustainable based on the blood report, as statutory presumption arises irrespective of visible intoxication. On sentence, considering that the applicant was a first offender but a police constable on duty, the Court imposed the minimum punishment, rejecting probation, observing that leniency would encourage indiscipline in the police force.

13. The Additional Sessions Judge upheld these findings upon independent evaluation. The Judge observed that Dr. Shah had adhered to Rule 4 by using disposable syringe, adding preservative before transfer, shaking the phial, and forwarding within time. The five-day delay in receipt at FSL was held not fatal in absence of tampering evidence, distinguished from Jethaji Suvaji (*supra*) which involved three-and-half months' unexplained delay. Non-examination of H.D. Dave was held immaterial as the chain was documented through Forms A, B, C and forwarding letters, and seals were intact.



14. It was further held that acquittal under Section 85(1)(3) did not bar conviction under Section 66(1)(b) as the ingredients differed. The plea under Section 251 Cr.P.C. omitting Section 66(1)(b) was treated as curable irregularity under Section 464 Cr.P.C., since no prejudice was shown, the applicant having defended the case on merits. The applicant's status as constable on duty warranted strict treatment, and minimum sentence was found proportionate.

15. To buttress the argument, Learned Advocate was a petitioner to buttress the argument in which he said that, the charge, specific and express charge has been framed against the applicant for the commission of the offence under Sections 66(1)(b) and 85(1)(3) of the Prohibition Act, and even at that time, no such protests have been loosed by the petitioners herein, not only that, the said contents do not seem to have been raised even at the stage of appeal, and simply by raising the same at this stage, though requires to be considered if there is any lapse in income it is left by the court, which otherwise hamper upon the case, which otherwise hamper upon the defence of the defence of the accused, but considering the facts of the case on hand, considering the facts of the case on hand, nothing short of any material, reflects so as to deprive the petitioner that is the case of the defendant, and therefore, the said contentions raised at the, at this stage cannot be entertained.

16. Upon independent scrutiny of the record, including depositions, exhibits and arguments, I find no perversity, illegality,



or miscarriage of justice in the concurrent findings. The prosecution established the chain of events beyond reasonable doubt through reliable police witnesses, medical examination by Dr. Shah, FSL analysis by Scientific Officer Goridatt, and investigation by P.W.20 and P.W.21. The blood alcohol concentration of 0.0945% conclusively proves consumption under Section 66(1)(b). The statutory presumption arises above 0.05%, making behavioral evidence supplementary but not essential. Reliance placed on **Behram Khurshed Pesikaka v. State of Bombay, (1955) 1 SCR 613** is apposite, where the Supreme Court held that consumption without permit under the Prohibition Act entails absolute liability.

17. Compliance with Rule 4 of the Blood Test Rules was duly established. Dr. Shah's deposition proved that disposable syringe and needle were used, skin was cleaned with gentian violet, preservative was added, blood was transferred, mixed, sealed, labeled and forwarded, thereby satisfying the mandate. Authorities cited by the applicant are distinguishable on facts. The chain of custody remained intact and seals were not tampered with. Minor delay of five days was within the seven-day statutory limit. Non-examination of the messenger caused no prejudice. Reliance may be placed on **State of Rajasthan v. Daulat Ram, (1980) 3 SCC 303**, where the Supreme Court held that minor gaps in chain of custody do not vitiate evidence if seals are intact.

18. The applicant's position as a police constable on duty aggravates the seriousness of the offence. The Supreme Court



has consistently held that acts of intoxication on duty by police personnel constitute grave misconduct. Reference may be made to **State of Punjab v. Ram Singh, (1992) 4 SCC 54, Govt. of T.N. v. S. Vel Raj, (1997) 2 SCC 708 and Deputy Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598**, wherein dismissal or severe punishment for similar conduct was upheld, the Courts emphasizing that police forces demand impeccable conduct and discipline.

19. Therefore, the minimum sentence imposed is not only justified but necessary to deter similar acts. Grant of probation or further reduction would send a wrong signal, undermining discipline and public confidence.

20. In view of the above detailed discussion, no case for interference is made out. The findings of both courts below are reasoned, based on proper appreciation of evidence, and suffer from no illegality, perversity, or miscarriage of justice.

21. Accordingly, the Criminal Revision Application stands rejected. Rule is discharged. The applicant shall surrender before the trial court within two weeks to serve the remaining sentence, if any. Bail bonds, if any, stand cancelled.

(R. T. VACHHANI, J)

MVP