



2025:KER:48676

CRL.MC NO. 5442 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

THURSDAY, THE 3RD DAY OF JULY 2025 / 12TH ASHADHA, 1947

CRL.MC NO. 5442 OF 2025

CRIME NO.1637/2024 OF MEDICAL COLLEGE POLICE STATION,

THIRUVANANTHAPURAM

**AGAINST THE ORDER/JUDGMENT IN ST NO.419 OF 2025 OF
ADDITIONAL CHIEF JUDICIAL MAGISTRATE, THIRUVANANTHAPURAM**

PETITIONER:

**SARAN KUMAR S.
AGED 33 YEARS
S/O SIVASAMBHU G.,
RESIDING AT VISHNU BHAVAN,
ELANKATHUVILA, MUDAVOORPARA,
BALARAMAPURAM P.O.,
THIRUVANANTHAPURAM,
PIN - 695501**

BY ADV SHRI.FAHEEM AHSAN.S

RESPONDENTS:

**1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,**



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PIN - 682031

**2 STATION HOUSE OFFICER
MEDICAL COLLEGE POLICE STATION,
MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM-695011**

BY SRI. M.C. ASHI, SR.PUBLIC PROSECUTOR.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 03.07.2025, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**



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ORDER

The petitioner is the accused in Crime No.1637 of 2024 registered at the Medical College Police Station, Thiruvananthapuram for the offence under Section 281 of BNS along with Sections 185, 3(1) and 181 of the Motor Vehicles Act.

2. The crime is registered on the allegation that the petitioner was found driving his scooter at about 08:30 PM on 30.12.2024 on the Medical College-Kumarapuram road in a rash and negligent manner. The vehicle was intercepted by the Police party and on suspicion that the petitioner had consumed alcohol, he was arrested and later released on self bond, after conducting a breathalyzer test.

3. Learned counsel for the petitioner contended that, going by Section 203 of the Motor Vehicles



Act, the breathalyzer test ought to have been conducted immediately after intercepting the vehicle, whereas in the petitioner's case the test was conducted much after his arrest. The next contention is that, as per Section 204 of the Motor Vehicles Act, the petitioner should have been subjected to medical test within two hours of his arrest. Yet another contention is that the print out of the breath analyzer test produced along with the final report shows the reading in the blank test conducted, immediately before the petitioner's breath sample was taken, as 412 mg/100 ml. It is submitted that the police was bound to ensure that the calibration of the device showed 'zero' before conducting the breathalyzer test. In this regard, reliance is placed on the Circular issued by the Director General of Civil Aviation, making it mandatory to conduct breath-analyzer test for personnel engaged in aircraft maintenance, air traffic control services, aerodrome operations and ground handling services.



4. It is argued that the offence under Section 181 of the Motor Vehicles Act is not attracted, since the petitioner was holding a valid licence at the relevant point of time, evidenced by Annexure A2.

5. Finally, it is contended that, since the offence under Section 281 of BNS is founded on the assumption that the petitioner was riding the scooter in a dangerous manner under the influence of alcohol, in the absence of proof regarding consumption of alcohol, petitioner cannot be prosecuted for that offence also.

6. Learned Public Prosecutor submitted that the Mahazar produced along with the final report clearly shows that the petitioner was riding the scooter in a dangerous manner, endangering human life. Hence, the challenge against the prosecution under Section 281 of BNS cannot be sustained.

7. Admittedly, the breathalyzer test was conducted some time after the petitioner's arrest. Going by



the proviso to Section 203(1) of the Motor Vehicles Act, breath test ought to be conducted as soon as reasonably practicable after commission of the offence. As per Section 204, if the person suspected of having consumed alcohol is arrested under Section 203, he shall be required to provide a specimen of his blood for laboratory test.

8. The contention that the breath analyzer test should have been conducted only after ensuring that the calibration of the instrument is at 'zero' is well founded for the following reasons;

A breathalyzer is a diagnostic device that measures the content of alcohol in the air a person breathes out. In the petitioner's case, the print out of the test shows the alcohol content as 41 mg/100 ml, which is above the permitted level of 30 mg/100 ml. At the same time, the reading of the Air Blank Test is 412 mg/100 ml. As such, no sanctity can be attached to the test conducted. Here, it is essential to note that the purpose of conducting an Air



Blank Test is to check for any residual alcohol before taking breath sample from a person using a breath alcohol testing device. Thus, the primary goal of a blank test is to verify that the breathalyzer is functioning correctly and is not influenced by any residual alcohol from previous tests. Therefore, it is mandatory to conduct an Air Blank Test and ensure that the calibration is at 'zero' before taking breath sample using a breath alcohol testing device. This precisely is the reason why, the DGCA made it mandatory to run an Air Blank Test on the instrument and obtain the reading '0.000' before each breathalyzer test. Therefore, the authenticity and acceptance of the breath analyzer test in evidence is dependent on the blank test reading being at '0.000' when the test was conducted.

9. As it is informed that the policemen conducting the test are not aware about this requirement, it is for the Director General of Police to issue necessary directions requiring the officers concerned to ensure that



Air Blank Test is conducted and '0.000' reading shown on the instrument before subjecting a person to breathalyzer test.

10. Insofar as the blank air test reading was 412 mg/100 ml when the petitioner's breath sample was tested, no reliance can be placed on the alcohol content recorded in that test. As the petitioner was not subjected to a separate medical test, there is no acceptable evidence regarding the alcohol level in his blood. In such circumstances, prosecution for the offence under Section 185 of the Motor Vehicles Act will be an exercise in futility.

11. The offence under Section 181 r/w 3(1) of the Motor Vehicles Act is also not attracted, since the petitioner is holding a driving licence, valid for twenty years from 07.06.2018 onwards.

12. The challenge against the prosecution under Section 281 of BNS has to fail, since the question whether the petitioner was riding the scooter in a manner



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endangering human life is to be decided based on the evidence to be tendered.

13. For the aforementioned reasons the Crl.M.C is allowed in part, by quashing the final report and further proceedings against the petitioner for the offences under Sections 185, 3(1) and 181 of the Motor Vehicles Act.

The Public Prosecutor shall make available a copy of this order to the Director General of Police.

Sd/-

V.G.ARUN

JUDGE

SPV



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APPENDIX OF CRL.MC 5442/2025

PETITIONER'S ANNEXURES

ANNEXURE A1 **THE CERTIFIED COPY OF FIR ALONG WITH
FIS VIDE NO. 1637 OF 2024, FINAL
REPORT ALONG WITH ALL DOCUMENTS
INCLUDING BREATH ANALYSER PRINT OUT**

ANNEXURE A2 **THE TRUE COPY OF THE LICENSE OF THE
PETITIONER VIDE NO. KL22 20180002561
ISSUED ON 2018-06-07**

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

PA TO JUDGE