



2025:KER:13915

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 19TH DAY OF FEBRUARY 2025 / 30TH MAGHA, 1946

CRL.MC NO. 709 OF 2021

CRIME NO.48/2019 OF Payangadi Police Station, Kannur

ST NO.291 OF 2019 OF JUDICIAL MAGISTRATE OF FIRST CLASS,

PAYYANNUR

PETITIONER/PETITIONER:

DHANESH M.,
AGED 41 YEARS
S/O. DAMODARAN, MOTHANGA HOUSE, EZHOME AMSOM, CHENGAL
DESOM, KANNUR DISTRICT.

BY ADV T.V.JAYAKUMAR NAMBOODIRI

RESPONDENTS/COMPLAINANTS:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682031.
- 2 STATION HOUSE OFFICE,
PAYANGADI POLICE STATION, PAYANGADI, KANNUR DISTRICT -
670303.

SRI. M.C. ASHI, PP.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
19.02.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**“CR”****ORDER**

Petitioner is the accused in Crime No.48 of 2019 registered at the Payangadi Police Station for the offences under Section 279 of the Indian Penal Code and Section 185 of the Motor Vehicles Act, now pending as STC No.291 of 2019 on the files of the Judicial First Class Magistrate Court, Payyannur.

2. The crime was registered on the allegation that, at about 22.10 hours on 21.01.2019, the petitioner was found driving his motor bike dangerously after consuming alcohol. In order to prove that the petitioner had driven the vehicle after consuming alcohol, report of the breathalyzer test conducted is the only piece of evidence. The challenge in the CrI.M.C is that the report of the breathalyzer test produced is of a typewritten document and is hence, of no



evidentiary value.

3. Learned counsel for the petitioner contended that as per Section 202 of the Motor Vehicles Act, a person arrested in connection with an offence under Section 185 should be subjected to medical examination within two hours of his arrest. Even though Section 203 provides for conduct of a breath test by the police officer, the result of that test can be accepted in evidence only if the print out of the test taken contemporaneously is produced, with the requisite certification. Reference is made to Circular No.44 of 2009 issued by the Director General of Police to point out that it is mandatory to conduct the breathalyzer test properly and obtain a printed copy of the test result and produce the same in court along with the charge sheet so as to sustain the charge. It is contended that no such test result is produced in the petitioner's case and all that is available is



a typed copy prepared by the police.

4. In the light of the above contention, learned Public Prosecutor was directed to ascertain whether the print out of the test result was produced along with the final report.

5. Learned Public Prosecutor submits that, as per the instructions received, the typewritten copy produced in this Crl.M.C is the report produced along with the charge sheet.

6. As contended by the learned counsel for the petitioner, it is mandatory to subject a person arrested in connection with the offence under Section 185 of the Motor Vehicles Act to medical test by a registered medical practitioner within two hours of his arrest. Section 203 empowers a police officer or an officer of the Motor Vehicles Department to require any person driving or attempting to drive a motor vehicle in a public place to



provide one or more specimens of breath for breath test, if the officer has any reasonable cause to suspect him of having committed an offence under Section 185. As per Sub-Section (6) of Section 203, the results of a breathalyzer test is admissible in evidence. But for that, the test should be conducted immediately, and if the accused refuses to undergo the test, after his arrest, within two hours, and the print out received from the equipment produced in court along with the charge sheet. The prosecution needs no further clarification in the light of Circular No. 44 of 2009 issued by the Director General of Police.

7. In the case at hand, the print out of the test is not produced. Instead, a typewritten copy prepared by the police is submitted along with the final report. As contended, no evidentiary value can be attached to the type written report. The results of the breathalyzer test made



admissible by Section 203(6) can only be for the original print taken from the equipment immediately after the test.

In the result, the Crl.M.C is allowed. All further proceedings in STC No.291 of 2019 on the files of the Judicial First Class Magistrate Court, Payyannur, as against the petitioner, is quashed.

Sd/-

V . G . ARUN
JUDGE

Sru



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APPENDIX OF CRL.MC 709/2021

PETITIONER'S ANNEXURES

**ANNEXURE A1 CERTIFIED COPY OF THE FIR IN CRIME NO.48/2019
OF PAYANGADI POLICE STATION.**

**ANNEXURE A2 CERTIFIED COPY OF THE FINAL REPORT DATED
21.01.2019 IN CRIME NO.48/2019 OF PAYANGADI
POLICE STATION.**