



Reserved On : 23.06.2025
Pronounced On : 11/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 860 of 2025**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No

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AMITKUMAR SURENDRABHAI CHAUDHARY

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR IH SYED SR.ADV. WITH MR. AMAAN SYED(14385) for the Applicant(s)

No. 1

MS JYOTI BHATT APP for the Respondent(s) No. 1

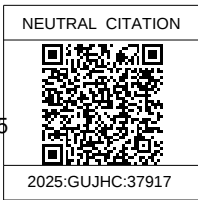
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CORAM:HONOURABLE MR.JUSTICE L. S. PIRZADA

CAV JUDGMENT

Date : 11/07/2025

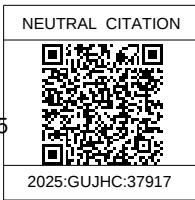
1. Rule. Learned A.P.P. Ms.Jyoti Bhatt waives service of Rule for the respondent - State.
2. With the consent of the learned advocates appearing for the respective parties, the present revision application



is taken up for final disposal.

3. The present revision application, preferred by the present applicant under Section 438 read with Section 442 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, the “BNSS”), is directed against the order dated 09.05.2025 passed by the learned Additional Sessions Judge, Mehsana in Criminal Revision Application No.74 of 2024, quashing and setting aside the order passed by the learned Chief Judicial Magistrate, Mehsana and rejecting Summary Report No.1 of 2023.

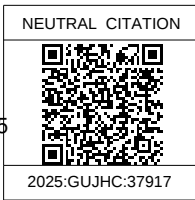
4. Brief facts leading to the failing of the present application are that one F.I.R. bearing No.11206045220586 of 2022 was registered before Mehsana City B Division police station on 04.09.2022 for the offence punishable under Sections 406, 420, 465, 467, 468, 471, and 120(B) of the Indian Penal Code and Section 135 of the Gujarat Police Act against total 45 accused persons. The said F.I.R. came to be filed by one



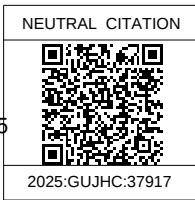
Mr.B.H. Rathod, P.I., S.O.G., District: Mehsana.

4.1. The case of the prosecution, in the nutshell, is that accused – Neel Patel, Dhruv Patel, Urvesh Shaileshbhai Patel and Savant Rajendrabhai Patel were found to be illegally entered into the United States of America by crossing the border of Canada to America through Saint Raizes River by boat on 28.04.2022 but, due to heavy winter and cool atmosphere, the boat was likely to be drawn and at that point of time, the residential police of America rescued these four accused persons and produced them before the learned District Court of Northern United State, District: New York for appropriate proceedings against them for illegally entering into the border of U.S.A.

4.2. During the proceedings before the Court in U.S.A., all these four persons were asked questions in English language but, they were neither able to understand the questions nor able to answer any question in English and, therefore, the questions were asked in Hindi language



through the Hindi translator and thereby, it was revealed that these four students had illegally qualified the International English Language Testing System (for short, 'I.E.L.T.S.') through the other students and during the conversation with these four students, it was also found that all these four students had secured 8 bands in I.E.L.T.S. examination but, they were unable to understand English and not been able to speak in English and that raised suspension that how, they were qualified in the I.E.L.T.S. examination. Thereafter, one news item was published in the Times of India newspaper on 31.05.2021 and subsequently, the U.S. Consulate General also sent email on 23.05.2022 to the Commissioner of Police, Mumbai and email was also sent to the Superintendent of Police, Mehsana and on the basis of the same, Inquiry no.16 of 2022 was assigned to Mr.B.H. Rathod, P.I. SOG, Mehsana and on the primary inquiry, it was found that all these four students had obtained high score in I.E.L.T.S. examination and they could not been able to understand English and after the preliminary



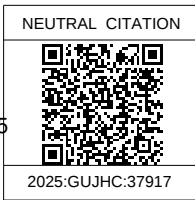
inquiry, it was found that these four students had committed irregularity in securing the high score certificate in I.E.L.T.S. examination for obtaining student visa of Canada.

4.3. On the basis of the said preliminary investigation report, the concerned authority has asked Mr.B.H. Rathod, P.I. SOG, Mehsana to lodge a complaint against the culprits and thereafter, said Mr.B.H. Rathod, P.I. SOG, Mehsana has filed F.I.R. against 45 accused persons for the offence punishable under Sections 406, 420, 465, 467, 468, 471 and 120(B) of the Indian Penal Code vide C.R.No.I-74 of 2022 before the Mehsana City 'B' Division police station.

4.4. Further, as per the case of the prosecution, one Mr.N.S. Ghetia has made an investigation from 05.09.2022 to 02.02.2023. However, on 02.02.2023, P.S.I. Mr.A.D. Bharot has transferred the investigation to one Dy.S.P. - Mr.Dinesh Chauhan, who has thereafter,

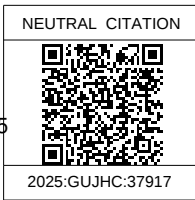


investigated the case from 05.02.2023 to 28.04.2023 and as per his investigation, he found insufficient evidence against the accused and, therefore, on 28.04.2023, submitted 'B' summary report in the Court of the learned Chief Judicial Magistrate, Mehsana and upon submission of the summary report, the learned Chief Judicial Magistrate, Mehsana issued notice to the original complainant i.e. P.I. - Mr.B.H. Rathod and P.I. - N.S. Ghetia and Mr.B.H. Rathod has filed his objections vide exh.7 and thereafter, on the basis of the summary report submitted by Dy.S.P. - Mr.Dinesh Chauhan during the summary proceedings i.e. Summary Case No.1 of 2023, the learned Chief Judicial Magistrate allowed the 'B' summary report submitted by investigating officer - Dy.S.P. - Mr.Dinesh Chauhan and against that, the State has preferred the revision application before the Sessions Court, Mehsana being Criminal Revision Application No.74 of 2024 and by order dated 09.05.2025, the learned Additional Sessions Judge, Mehsana has set aside the order of the learned Chief Judicial Magistrate,



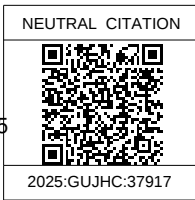
Mehsana, allowing the 'B' summary report and remitted the case to the learned Chief Judicial Magistrate, Mehsana for passing an appropriate order and also directed the concerned Magistrate to send the case to the Director General of Police, Gujarat State for appointing honest and competent police officer to the rank of P.I. or Dy.S.P. for making further investigation, considering the objections submitted by original first informant - Mr.B.H. Rathod vide exh.7. Hence, the said order passed in Criminal Revision Application No.74 of 2024 is challenged by way of preferring the present revision application.

5. Learned Senior Counsel Mr.I.H. Syed appearing with learned advocate Mr.Amaan Syed for the applicant submitted that the order passed by the learned Sessions Judge is against the settled principles of law and is required to be quashed and set aside. It is submitted that the learned revisional Court has no power, directing the learned Chief Judicial Magistrate to pass such type of order and it is beyond the purview and power of the



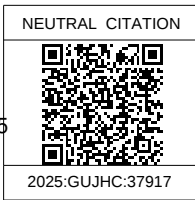
revisional Court and, therefore, also the order of the learned Additional Sessions Judge, Mehsana is required to be quashed and set aside. It is submitted that the order of the Sessions Court is passed without application of mind as the finding recorded by the learned Sessions Judge that the 'B' summary report was filed without the sanction or approval of the Commissioner of Police, Mehsana but, there is no such post of Commissioner of Police in Mehsana district and only the District Superintendent of Police, Mehsana is there and, therefore, the order is illegal, perverse, suffers from material irregularity.

5.1. It is submitted that as per Section 232 of the Gujarat Police Manual, there is no provision for obtaining the sanction from the higher authority and, therefore, the finding recorded by the Sessions Court is against the settled principles of law and the impugned order is required to be quashed and set aside.



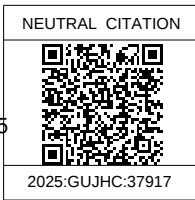
5.2. It is submitted that in the order, the Sessions Court has mentioned the Bombay Police Manual but, this manual is not in operation in the Gujarat State and the impugned order is without application of mind and is required to be quashed and set aside. It is further submitted that during the hearing of the 'B' summary report before the learned Chief Judicial Magistrate, the report of the D.F.S.L. was called for by the concerned Magistrate and after considering the same, the order has been passed by the learned Chief Judicial Magistrate, allowing the 'B' summary report. Further, it is submitted that as per the judgment of the Hon'ble Apex Court in the case of Sakiri Vasu vs. State of Uttar Pradesh and others, reported in (2008)2 SCC 409, the Magistrate has all the powers to monitor the police investigation and hence, the learned Chief Judicial Magistrate, while hearing the summary report, has called for the report is also just and proper.

5.3. It is submitted that considering the above, the



impugned order dated 09.05.2025 passed by the revisional Court is without application of mind and the same is required to be quashed and set aside. It is submitted that the learned Chief Judicial Magistrate also considered all the objections submitted by first informant - Mr.B.H. Rathod and has given his detailed findings for the same and considering the same, the finding recorded by the revisional Court, while setting aside the order of the learned Chief Judicial Magistrate, is also against the settled principles of law and is required to be quashed and set aside and the present application is required to be allowed.

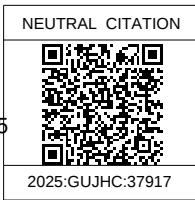
6. On the other hand, learned A.P.P. Ms.Jyoti Bhatt for the respondent - State has vehemently opposed the present application and submitted that the order passed by the revisional Court i.e. the learned Additional Sessions Judge, Mehsana is just and proper and does not require any interference. It is submitted that as per the circular issued by the Director General of Police,



Gandhinagar on 23.12.2012, it is mandatory for the police officer to submit any report and he has to take permission from his higher officers.

6.1. Learned A.P.P. Ms.Bhatt relied upon the judgment of this Court in the case of Jamilaben Hanif Manek vs. Sama Jusab Jasraya reported in 2012(5) GLR 3712 and submitted that it is not mandatory for the Magistrate to accept the summary report and the Court has all the powers to order for further investigation. It is submitted that considering the same, the present revision application, being devoid of merits, is required to be dismissed.

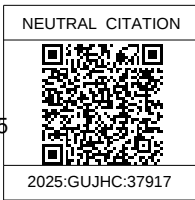
7. After considering the arguments advanced by the learned advocates for the respective parties, it is required to be considered whether the order passed by the learned Additional Sessions Judge, Mehsana, quashing and setting aside the order of the learned Chief Judicial Magistrate of accepting the 'B' summary report is ex-



facie illegal or required to be set aside or not.

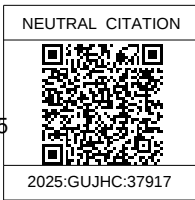
8. The short facts of the case are already been narrated above. So far as the present application is concerned, the applicant have been shown in the F.I.R. as accused no.1. Further, from the record, it transpires that the learned Additional Sessions Judge, Mehsana, while setting aside the order of the learned Chief Judicial Magistrate, has mainly considered two aspects, namely, (i) as per Section 232 of the Gujarat Police Act, investigating officer – Mr.Chauhan has not obtained any sanction from his higher officers and (ii) learned Chief Judicial Magistrate, without considering the objections of the original first informant, has decided the application as there were ample evidence found during the investigation.

9. Learned Senior Counsel Mr.I.H. Syed has mainly contended on two grounds that in the order passed by the learned Additional Sessions Judge, it is mentioned that the investigating officer has not obtained any sanction

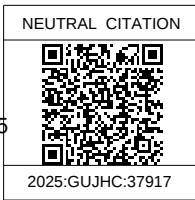


from the Commissioner of Police, Mehsana but, there is no post of Commissioner of Police in the district of Mehsana. Therefore, if the argument is considered, definitely, it is an admitted position that there is no post of Commissioner of Police at Mehsana district but, merely by mentioning Commissioner of Police, Mehsana instead of District Superintendent of Police, Mehsana, does not make the whole judgment illegal, there may be a typographical mistake. Further, in the order, by mentioning Bombay Police Act, instead of Gujarat Police Act, also does not make the whole order illegal.

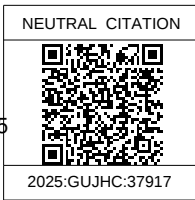
10. Now, the main moot question is that so far as the finding recorded by the learned Additional Sessions Judge, Mehsana is concerned, the finding recorded by the revisional Court is that Dy.S.P. – Mr.Chauhan, vide order dated 02.02.2023, was assigned the investigation and subsequently, within two months, he has completed the investigation and filed 'B' summary report and the report mainly states that no evidence has been found to file any



chargesheet against the accused persons and that, as per the complaint given by the first informant, the offence has not been committed within the limits of Mehsana City so, the Mehsana police has no jurisdiction to investigate and on this ground, the 'B' summary report has been submitted. The learned revisional Court has considered the report and the order of the learned trial Court. It is also observed in the order that as per the report of the investigating officer - Dy.S.P. - Mr.Chauhan, as the offence has been committed in Navsari, therefore, Mehsana police has no jurisdiction to investigate the case but, original informant and previous investigating officer - Mr.Rathod has categorically stated in his objections before the learned Chief Judicial Magistrate that the accused has applied for visa in Mehsana and filled up the form of I.E.L.T.S. examination from Mehsana. Further, the revisional Court has also observed that Dy.S.P. - Mr.Chauhan has made investigation of the case from 05.02.2022 to 28.04.2022 so, within two and half months, he has submitted summary report but, in the summary



report presented before the learned Chief Judicial Magistrate, during the investigation, the opinion of the handwriting expert was obtained on 13.12.2022 and it was revealed that the answersheet of the four accused collected during the investigation, do not contain the handwriting of the four accused persons and also, it was stated during the investigation that another person has appeared in the examination of I.E.L.T.S. on behalf of the four students and it is also submitted the objections to the effect that, who had appeared for the written and oral test on behalf of the four accused students and how the accused students qualified in written as well as oral test of I.E.L.T.S. But, Dy.S.P. - Mr.Chauhan did not make any investigation on the said aspect, even the natural handwriting was also not taken by investigating officer – Mr.Chauhan. Further, it is required to be considered that during the hearing of the ‘B’ summary before the learned Chief Judicial Magistrate, the report of F.S.L. was not received and during the hearing of the same, report of the handwriting expert has been called for by the learned



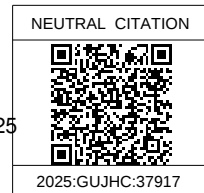
Magistrate so, without having a report of the handwriting expert, 'B' summary has already been tendered and in the report of the handwriting expert, it was found that the handwriting does not match with the handwriting of the four accused persons so, the answer-sheet were not written by the said four accused persons.

11. Further, from the findings recorded by the learned revisional Court, it is recorded that as per Section 232 of the Gujarat Police Act, before submitting the final report, he has to seek sanction from his higher officer.

12. In this regard, it is profitable to peruse Section 232 of the Gujarat Police Manual, which reads as under:-

"232. Final reports.-- (1) When there is no sufficient evidence to justify the forward of the accused to a Magistrate the Police Station Officer or the investigating officer will release the accused person on bail, if he is in custody.

(2) The Police Station Officer will then submit a final report to the Magistrate empowered to take cognizance of an offence on a Police report through the Sub-Divisional Police Officer in the following three classes of cases :



(a) Those in which it appears from the Police investigation that no offence has been committed.

(b) Those in which it appears from the Police investigation that only a non-cognizable offence has been committed.

(c) (i) Those in which there are grounds for believing that an offence has been committed, but in which, in the opinion of the officer-in-charge of the Police Station, there are not sufficient grounds to investigate or there is not sufficient evidence to justify sending any accused for trial, or in which the offender is not known or cannot be arrested and sent for trial.

(ii) In cases referred to the Police by a Magistrate, the final report will be sent direct to the Magistrate.

(3) The final report should be written up carefully by the officer-in-charge of the Police Station personally and should be accompanied by all the case papers numbered and indexed methodically. If the accused has been released on bail, the Magistrate should be requested to cancel the bail bond. He should also be requested to pass orders regarding the disposal of property attached, unless any of the articles, e.g., blood stained clothes, are required for further use in true but undetected cases. A request should also be made to the Magistrate to classify the case and to issue an appropriate summary of his order, viz. :

(i) "A" True, undetected (where there is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to justify his being sent up to the Magistrate (for trial).

(ii) "B" Maliciously false.

(iii) "C" Neither true nor false, e.g., due to mistake of facts or being of a civil nature,

(iv) "Non-cognizable" Police investigation reveals commission of only a non-cognizable offence.

(4) A Sub-Divisional Officer is not bound to forward a final report to the Magistrate immediately. He may of his own motion direct further enquiry or he may for special reasons permit a case to remain pending



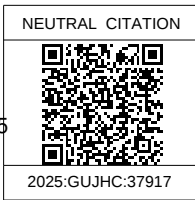
under investigation.

(5) When any further investigation is ordered and made subsequent to the submission of the final report the papers should, at each stage upto final disposal, be sent through the Sub-Divisional Officer. In urgent cases, however, the Magistrate may return the papers direct to the investigating officer.

(6) When a final report of an officer-in-charge of a Police Station is returned to him for further investigation or other purpose, the date of the submission of the final report in its last and complete form should be taken as the date of its submission to the Magistrate for the purpose of determining the beginning of the period of 14 days within which a summary of the Magistrate's final order should be sent.

(7) It is not competent to a Magistrate to return investigating officer's report made to him under [Section 173](#), Criminal Procedure Code, with an order to make a case against the accused and to send it up for trial. If the Magistrate considers that there is a prima facie case against the accused he should take action under [Section 204](#) of the Code. A reference should also be made to instructions contained in sub- rules (2) & (3) of rule 230."

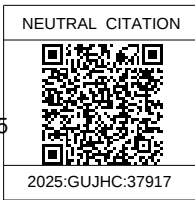
13. Therefore, as per said Section, the final report to the Magistrate must be submitted through the sub-divisional police officer in three class of cases i.e. (i) first category of cases where, as per the police investigation, no offence has been committed (ii) or from the investigation, it appears that only a non-cognizable offence has been committed and (iii) or if there is a ground for believing



that the offence has been committed but, no sufficient grounds to investigate or no sufficient evidence to justify sending any accused for the trial.

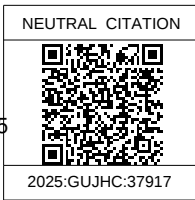
14. So far as the present case is concerned, as relied upon by learned A.P.P. Ms.Bhatt regarding the circular issued by the Director General of Police, Gujarat State on 23.12.2012, even before submitting the chargesheet or before submitting a final report, it should be submitted through the higher officer and if the higher officer finds the investigation to be fair, he also make an opinion whether, the chargesheet is required to be filed against the accused persons and then, give permission to file a chargesheet and in case, it is found that there is no sufficient evidence to file chargesheet, then he can also ask for the further investigation.

15. Therefore, from the conduct of investigating officer - Mr.Chauhan, it is found that within a period of two months, he has completed the investigation and the investigation has not been done properly and even



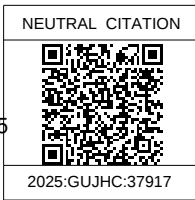
without waiting for the opinion of the handwriting expert, he jumped to the conclusion that no sufficient evidence has been found and the offence has been committed in Navsari and not in Mehsana but, in the case, the investigation can be transferred to Navsari also, if Dy.S.P. - Mr.Dinesh Chauhan come to the conclusion.

16. Hence, considering this, the findings recorded by the learned Additional Sessions Judge, setting aside the order passed by the learned Chief Judicial Magistrate, Mehsana, who, in turn, accepted the 'B' summary report, is found to be just and proper. I do not find any illegality having committed by the revisional Court. I also do not find any reason to interfere with the findings recorded by the revisional Court, which do not warrant any interference. Further, the revisional Court has rightly rejected the order of the learned Chief Judicial Magistrate, Mehsana and remitted the matter back to the learned Chief Judicial Magistrate to decide afresh the 'B' summary report submitted by Dy.S.P. - Mr.Chauhan.



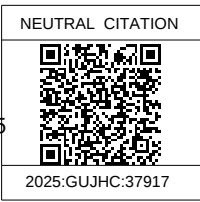
17. Now, the direction given by the revisional Court, after remitting the matter to the learned Chief Judicial Magistrate, Mehsana, that the learned Chief Judicial Magistrate, Mehsana has to pass an appropriate order of sending the case to the Director General of Police, Gujarat State for appointing the honest and competent police officer to the rank of P.I. or Dy.S.P. for making further investigation of the case, the same is not found to be correct in eye of law, even no Court can direct any Judicial Officer to pass such an order. It is always a domain of the concerned Magistrate to pass appropriate order. Therefore, the said direction is required to be interfered with and is also required to be set aside.

18. Hence, considering the above, the present revision application is partly allowed. The order dated 09.05.2025 passed by the learned Additional Sessions Judge, Mehsana in Criminal Revision Application No.74 of 2024, allowing the revision application and setting aside the order dated 09.10.2024 passed in Summary Report No.1



of 2023 in C.R.No.I-74 of 2022 registered before the Mehsana City 'B' division police station, remitting the same to the Court of the learned Judicial Magistrate, Mehsana to decide the same afresh, is hereby confirmed. Further, the order passed by the learned Additional Sessions Judge, Mehsana to the extent of direction issued to the learned Chief Judicial Magistrate, Mehsana for passing the appropriate order of sending the case to the Director General of Police for appointing the honest and competent police officer to the rank of P.I. or Dy.S.P. for making further investigation of the case on all aspects of the objections submitted by the previous investigating officer - Mr.B.H. Rathod vide exh.7, is hereby quashed and set aside.

19. The learned Chief Judicial Magistrate, Mehsana has to decide Summary Report No.1 of 2023 filed in C.R.No.I-74 of 2022 before the Mehsana 'B' division police station, afresh without influenced by the observations made by this Court as well as observations made by the learned



Additional Sessions Judge, Mehsana, in accordance with law.

20. Rule is made absolute to the aforesaid extent.

Hitesh

(L. S. PIRZADA, J)