

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION NO.15095 of 2024  
(QUASHING)**

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**PURSHOTTAMBHAI ODHAVJI SOLANKI****Versus****STATE OF GUJARAT & ANR.**

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**Appearance:****MR HS TOLIA with MR PARTH S TOLIA(5617) for the  
Applicant(s) No. 1****MR UTPAL R DAVE(6531) for the Applicant(s) No. 1****MR ROHAN SHAH APP for the Respondent(s) No. 1**

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**CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI****Date : 25/02/2025****ORAL ORDER**

Heard learned Senior Counsel, Mr. H.S. Tolia assisted by learned advocate, Mr. Parth Tolia for the applicant and learned APP Mr. Rohan Shah for the respondent no.1 – State of Gujarat.

Learned Senior Counsel submitted that the matter has a chequered history as on the strength of the order passed by this Hon'ble Court, the respondent no.2 herein has filed private complaint before the court concerned, wherein an order came to be passed under Section 202 of the CrPC, however, the said order was challenged before this Hon'ble Court by filing writ petition, which was not entertained as it was filed at premature stage and, thereafter considering the facts of the case as mentioned in the complaint filed by the respondent no.2 herein, the court concerned issued process upon the accused persons, however, the said

order of issuance of process was also challenged before this Hon'ble Court by filing writ petition, which was also not entertained by this Hon'ble Court, however at that time, specific observations are made by this Hon'ble Court that the offences are warrant triable and, therefore before taking cognizance upon the fact and framing charge against the accused persons, pre-charge evidence is required to be allowed and sufficient opportunity of cross-examination of the witness would be provided to the applicant and, thereafter, the applicant has got valuable time to file discharge application under Section 245 of the CrPC. He further submitted that thereafter the evidence of the witnesses have been recorded by the court concerned and, thereafter, the discharge application was preferred by the applicant under Section 245 of the CrPC, which was not entertained by the court concerned, therefore the present application is preferred.

Learned Senior Counsel submitted that in fact, at the time of leading evidence of the witnesses, learned advocate, who was representing the applicant, could not remain present, therefore, right was closed, therefore, the applicant preferred an application to recall the witness, which was not entertained by the court concerned at the relevant point of time, therefore being aggrieved by the said order, a writ petition was preferred before this Hon'ble Court, which was eventually allowed by this Hon'ble Court, however the said order has been assailed by the respondent no.2 before the Hon'ble Supreme Court by filing SLP, which

is pending for adjudication. He further submitted that however on the ground of pendency of the SLP before the Hon'ble Supreme Court, the respondent no.2 is not entering into witness box despite issuance of summons and on the contrary, the respondent no.2 submitted an application, Exh.320 by reiterating the said fact to the effect that unless and until the decision is taken by the Hon'ble Supreme Court in the SLP, he would not be in a position to depose before the Hon'ble Court and since then, the matter is pending at that stage. Learned Senior Counsel submitted that despite the said fact, proper opportunity to make cross-examination had not been provided to the applicant and the court concerned has proceeded further with the trial and ultimately at the end of day, without considering the material available on record, the court concerned passed an order rejecting the said application. He further submitted that at the time of jumping to a conclusion, the court concerned has specifically given opinion to the effect that at the time of deciding earlier application, the Hon'ble High Court of Gujarat has given specific finding to that effect, therefore, no further action is required to be taken and prima facie it seems that basic and essential ingredients to constitute the offence is made out and the discharge application by assigning detailed reasons, came to be rejected. He further submitted that now the trial is at the stage of framing of charge and if the charge is framed, in that event, great prejudice would be caused to the applicant.

I have heard learned Senior Counsel appearing for the applicant and also gone through the material available on record. Prima facie it is found out that despite the fact that specific direction was issued by this Hon'ble Court that after recording the evidence of the witnesses, the discharge application be preferred, however when the said application was preferred, it was rejected, however the documents available on record clearly goes on to show that uptill now, further cross-examination of the respondent no.2 had not been carried out by the defence, therefore without leading evidence on record, the court concerned ought not to have proceeded further to frame the charge against the accused.

Therefore in view of the above facts of the case, the matter requires consideration.

Hence, issue **Notice** making it returnable on **22<sup>nd</sup> April, 2025**.

Learned APP waives service of notice for respondent – State of Gujarat.

Ad-interim relief in terms of Para No.7(B) till then.

Sd/-  
(DIVYESH A. JOSHI, J.)

Gautam