

Reserved On : 04/03/2025
Pronounced On : 19/03/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
 FIR/ORDER) NO. 5098 of 2017**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
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SADHVIJI JAYSHRIGIRI GURU JAGDISHGIRI

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR BM MANGUKIYA(437) for the Applicant(s) No. 1

MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1

MR AKASH N SHAH(10130) for the Respondent(s) No. 2

MR. KALRAV R PATEL(7041) for the Respondent(s) No. 2

MR MANAN MAHETA, ADDL.PUBLIC PROSECUTOR for Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. Rule. Learned APP Mr.Soham Joshi waives service of notice of rule for respondent – State and learned advocate Mr.Kalrav Patel waives service of notice of rule for respondent No.2.

2. By this application under Section 482 of the Code of Criminal Procedure (for short “the Code”), the applicant seeks quashing of the FIR registered as C.R. No.I-25 of 2017 registered with Shahibaug Police Station, Ahmedabad for the offence punishable under Sections 406, 420 and 506(1) of the Indian Penal Code and further proceedings arising thereof.

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

3.1 It is the case of complainant that land of friend of first informant Subhash was acquired by Gujarat Housing Board and he wanted to see that land is cleared and released from Gujarat Housing Board. The petitioner gave assurance that sh has political acquaintance and acquaintance with officers and she would see to it that land is cleared. It is alleged that first informant gave Rs.1.25 Crores to the petitioner. However, since after passage of time, when the no action was taken, the first informant approached the petitioner but the petitioner under different pretext did not meet the first informant and the first informant was given threats of dire consequences. The complainant filed the FIR in question against the accused person. Hence, the present petition.

4. Heard learned Advocates appearing for the respective parties.

5. Arguing for the petitioner, learned advocate Mr.B.M.Mangukiya would submit that the FIR is filed after the five years of the alleged incident. He would further submit that to entangle the present petitioner in legal soup barring the impugned FIR, series of written complaints have been lodged with the police department. He would further submit that looking to the tenor of the FIR, it seems to be a civil litigation which has been given colour of criminality. After referring the impugned FIR, Mr.Mangukiya termed all allegations as general and vague allegations. He would submit that no essential ingredients of offence punishable under Section 406 and 420 of

IPC are satisfied. He would further submit that person of ordinary prudence would not lend such a huge amount to the petitioner being a *Sadhavi* who has renounced the normal life and therefore, looking to these circumstances, he would submit that FIR is vexatious and frivolous and needed to be quashed by exercising the inherent powers. Upon above submissions, he would submit to allow this petition.

6. *Per contra*, learned advocate Mr.Kalrav Patel appearing for the first informant on the other hand would submit that on reading the FIR, it indicates that specific name of the petitioner as well as her role has been specifically stated therein. He would further submit that in capacity of *Sadhavi* of Math, the petitioner has duped huge amount from the large section of the society who have kept blind faith upon her religiously and spiritually. It is also submitted that she is since holding political connections, she could not allow to file FIR against her till the impugned FIR. He would submit that all the victims then rushed to the police and lodged various complaints against the present petitioner. He would further submit that on bare reading of the FIR, essential the ingredients of offence under Section 405 and 415 of IPC are made out, punishment of which are stated in Section 406 and 420 of IPC and therefore, he submits that allegations against the present petitioner deserve to be tested during the trial. He would further submit that the FIR should not be scuttled at the initial stage of investigation. Upon above submissions, he would submit to dismiss this petition.

7. Learned APP Mr.Manan Maheta appearing for the respondent – State adopts the arguments of learned advocate Mr.Patel and would submit that in all ten FIRs are filed against

the present petitioner. He would further submit that the petitioner is *Sadhavi* of Math and she is *Mahant* and taking disadvantage of her position, she has duped so many persons from the society. The antecedents are recorded against the petitioner and in view of that, the petition deserves no consideration. He would further submit that initially looking to the position of the petitioner, people were found it difficult to lodge the FIR. But since they mustered courage after filing of the impugned FIR, so many other victims have lodged FIR against the present petitioner. In all crores of rupees have been duped by the petitioner by luring the innocent people. In such circumstances, learned APP submits that investigation may be allowed to go on and submits to dismiss this petition.

8. I have heard learned advocates for both sides and perused the record. At the outset, I may observe that the powers possessed by this Court under Section 482 of Cr.P.C. are very wide and very plentitude of the powers, requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution but court's failing to use the power for advancement of justice can also lead to grave injustice. The High Court should normally refrain from giving prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. (See para 18 and 19 of **Preeti Gupta vs. State of Jharkhand and another – 2010 (7) SCC 667**).

8.1 In **CBI vs. A. Ravishankar Prasad and others – 2009 (6) SCC 351**, the Hon'ble Apex Court while summing up held as under :

“40. Careful analysis of all these judgments clearly reveals that the exercise of inherent powers would entirely depend on the facts and circumstances of the each case. The object incorporating inherent powers in the Code is to prevent abuse of the process of the court or to secure ends of justice.

41. Both English and the Indian courts have consistently taken the view that the inherent powers can be exercised in those exceptional cases where the allegations made in the first information report or the complaint, even if are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.”

9. I may refer to the FIR filed by the first informant which is in vernacular language Gujarati and same is translated into English and reproduced as under :

“The facts of myself - the complainant are such that,

1) I - the complainant, reside at the above mentioned address and I know the respondent of this case very well. The respondent of this case is a lady monk and has a monastery and she has a prominent image among the public.

2) My friend Subhash Lohar has land at Gorva, Baroda. A payment of One crore twenty five lakhs was decided to clear the said land from the Housing Board. The respondent lady monk gave us the assurance that, as she has political and bureaucratic affiliation she will get this work done, One crore rupees from the said amount was paid at Shahibaug Annex Office and the remaining twenty five lakhs were paid at the Housing Board Office and the respondent gave us the assurance that the said work will be done in a short period of time. Accordingly, as the respondent had a prominent image

as a lady monk, we placed trust and belief in her.

3) *Thereafter, as long time had passed after the said incident and no reasonable results were obtained, we contacted the respondent. She kept making us false promises and later, she stopped receiving our phone calls. And despite being present in the monastery, she would send a message through her disciples that she is not present. Thereafter, when we contacted her with great difficulty, after some hesitation she said to us that, our work will not get done and also the reason will not be provided and, if another demand of this amount is raised then, I will get you killed and no trace of your will be found. You do not know who am I and what I can do. Such a criminal threat was given.*

The respondent owns a Mukteshwar monastery and she carries out illegal activity in such manner because of the political connection by virtue of owning the monastery. As she has committed a fraud and betrayal with us by embezzling such a huge amount, also she has given the criminal threat of murder. As she is capable of executing this death threat and as per the information received by us, the respondent is arrested in a state wide scam, so I am filing this complaint to carry out investigation against the respondent as per law.

I will produce my witness when needed.”

10. Sections 405 and 415 of IPC are relevant provisions and they are reproduced as under :

“405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

415. Cheating.--Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
Explanation.--A dishonest concealment of facts is a deception within the meaning of this section."

11. What could be noticed that it is case of duping of huge amount which runs into crores of rupees whereby by giving false promises, the petitioner has taken up around 16.200 Kg gold from the first informant and then the first informant was taken to Ahmedabad under the promise that she will pay the amount of the gold at the said place and then also she made the first informant to sit at a particular place and told that she will pay the amount within short span. From this stage, the petitioner vanished. Thereafter, they did not turn back and as such duped gold around 16.200 Kg worth of Rs.5,20,00,000/- from the first informant.

12. In all ten identical FIRs are lodged against the petitioner. On bare perusal of the FIR, it indicates that there is criminal breach of trust. *Prima facie* ingredients of criminal breach of trust defined under Section 405 of IPC as well as Section 415 i.e. deceiving any person fraudulently or dishonestly are attracted in the case on hand. Upon the trust given by the petitioner, the first informant has entrusted 16.200 Kg of gold to the petitioner Sadhavi and then she took the gold and run away with 16.200 Kg of gold. She has deceived the first informant fraudulently and dishonestly and got delivery of 16.200 Kg of gold and did not pay

the amount for the same. Looking to all these facts and more particularly the fact that ten identical cases have been lodged against the petitioner, this Court is of the opinion that the petitioner has failed to put a case where the Court should exercise inherent power. The incomplete and hazy facts coming from the record indicates that further investigation is required in the matter. Total amount which is duped as per the FIR is Rs.5,02,20,000/-. So looking to these facts and circumstances, I am not inclined to exercise the jurisdiction.

13. It cannot be said at this juncture that lame prosecution has been launched against the petitioner. The very nature of the material available on which the FIR rests *prima facie* justifies the allegations. It cannot be said that filing of FIR against the petitioner is abuse of process of law. The record discloses commission of the cognizable offence and *prima facie* ingredients of offences are satisfied and therefore, such criminal proceedings cannot be quashed merely because some civil wrongs are also attracted.

14. In **Amit Kapoor vs. Ramesh Chander and another – 2012 (9) SCC 460**, I may refer to relevant para 27 as under :

“27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of

jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

27.1 Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5 Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6 The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7 The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8 Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10 It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11 Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

27.13 Quashing of a charge is an exception to the rule of

continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14 Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15 Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

{Ref. State of West Bengal & Ors. v. Swapan Kumar Guha & Ors. [AIR 1982 SC 949]; Madhavrao Jiwaji Rao Scindia & Anr. v. Sambhajirao Chandrojirao Angre & Ors. [AIR 1988 SC 709]; Janata Dal v. H.S. Chowdhary & Ors. [AIR 1993 SC 892]; Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Ors. [AIR 1996 SC 309]; G. Sagar Suri & Anr. v. State of U.P. & Ors. [AIR 2000 SC 754]; Ajay Mitra v. State of M.P. [AIR 2003 SC 1069]; M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. [AIR 1988 SC 128]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705]; Ganesh Narayan Hegde v. s. Bangarappa & Ors. [(1995) 4 SCC 41]; Zundu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Ors. [AIR 2005 SC 9]; M/s. Medchl Chemicals & Pharma (P) Ltd. v. M/s. Biological E. Ltd. & Ors. [AIR 2000 SC 1869]; Shakson Belthissor v. State of Kerala & Anr. [(2009) 14 SCC 466]; V.V.S. Rama Sharma & Ors. v. State of U.P. & Ors. [(2009) 7 SCC 234]; Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr. [(2009) 11 SCC 203]; Sheo Nandan Paswan v. State of Bihar & Ors. [AIR 1987 SC 877]; State of Bihar & Anr. v. P.P. Sharma & Anr. [AIR 1991 SC 1260]; Lalmuni Devi (Smt.) v. State of Bihar & Ors. [(2001) 2 SCC 17]; M. Krishnan v. Vijay Singh & Anr. [(2001) 8 SCC 645];

Savita v. State of Rajasthan [(2005) 12 SCC 338]; and S.M. Datta v. State of Gujarat & Anr. [(2001) 7 SCC 659]}.

27.16 These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence.”

15. In light of the above principle, this Court finds no reason to scuttle the FIR at the initial stage. For the aforesaid reasons, this petition is dismissed. Rule is discharged.

(J. C. DOSHI, J)

GAURAV J THAKER