IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 8526 of 2025

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PATEL BAHECHARBHAI BHIKHABHAI
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR YASH J PATEL(11240) for the Applicant(s) No. 1
MR MANAN MAHETA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**
Date : 02/07/2025
ORAL ORDER

[1.0] Present petition under Articles 226 and 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") is filed by the petitioner seeking quashing of judgment and order dated 21.01.2025 passed by the learned 3rd Additional Sessions Judge, Idar in Criminal Revision Application No.6/2024 as well as the judgment and order dated 20.04.2024 passed by the learned Additional Chief Judicial Magistrate, Idar in Criminal Inquiry No.8/2021.

[2.0] The brief facts as culled out from the petition are as follows:

[2.1] The petitioner – original complainant had filed a complaint dated 24.06.2020 before the Idar Police Station against private respondents herein for the offences punishable under Sections 34, 120(A), 120(B), 149, 153(A), 383, 511, 506, 506(2) and 114 of the Indian Penal Code, 1860 (for short "IPC") however, as the police did not initiate any action against the private respondents, the petitioner herein preferred a criminal complaint before the learned Additional Chief Judicial Magistrate, Idar which came to be registered as Criminal Inquiry No.8/2021 under Section 202 of the CrPC, which came to be

dismissed by the learned Magistrate by impugned order under Section 203 of the CrPC.

[2.2] The said order was challenged before the learned Additional Sessions Judge by way of Criminal Revision Application No.16/2021 which has also been rejected and the order of the learned Magistrate has been upheld by the learned 3rd Additional Sessions Judge, Idar.

[2.3] Being aggrieved and dissatisfied with the impugned orders, the petitioner has preferred the present petition.

[3.0] Learned advocate for the petitioner has submitted that both the Courts below have committed error in dismissing the complaint filed by the petitioner by assigning reason that no evidence is produced in support of the allegations made by the petitioner and therefore, the IO opined that no offence is made out. Therefore, he has requested to allow the present petition and quash and set aside the orders passed by both the Courts below.

[4.0] Learned APP has vehemently opposed the present petition and submitted that both the Courts below have not committed any error in law and no interference of this Court is required in exercise of powers under Article 226/227 of the Constitution of India read with Section 528 of the BNSS and therefore, has requested to dismiss the present petition.

[5.0] Having heard the learned advocate for respective parties and perusing the record it appears that present petitioner approached the learned trial Court by way of filing the private complaint for the offences punishable under Sections 34, 120(A), 120(B), 149, 153(A),

383, 511, 506, 506(2) and 114 of the IPC. During the inquiry under Section 202 of the CrPC, report from the Idar Police Station was called for. Perusing the said report, it appears that Idar Police opined that no offence is made out. Thereafter, evidence was recorded during the inquiry proceeding and the learned Magistrate came to conclusion that the alleged incident took place on 24.06.2020 and 27.10.2020 and in this regard, earlier written complaint came to be filed before Idar Police Station and four eye-witnesses were cited in the complaint but no witness is produced before the authority. During the investigation, no any material was found to substantiate the said allegation. On the contrary, police came to conclusion that there was some dispute qua water of well and many transactions worth Rs.52,550/- took place in connection of erecting the well and dispute was *qua* partnership of well and to maintain the said well dispute arose between the accused and the complainant. Learned Magistrate come to conclusion that there were number of litigation and civil disputes going on between the parties and cloak of criminality is given to civil dispute. No any witness is found which supports the alleged incident. No any eye-witness is there. Hence, after conducting the inquiry under Section 202 of the CrPC, learned Magistrate come to conclusion that no offence is made out and under Section 203 of the CrPC, the complaint of the petitioner came to be dismissed.

[5.1] In revision application also, the learned Revisional Court has been pleased to uphold the said finding and come to conclusion that the learned Magistrate has given satisfactory reasons and after recording the evidence of petitioner's wife, daughter and other witnesses and considering the record has come to the conclusion that dispute between the parties is civil in nature and no offence as alleged is made out. Hence, *prima facie,* merely mentioning sections is not

enough. The petitioner – complainant shall have to produce material or evidence which depicts that alleged offence is committed but in the present case, in absence of any evidence, no any common intention or conspiracy is made out. Even, there is nothing on record which suggests commission of offence under Sections 149 and 153(A) of the IPC and even the complaint of the petitioner is silent in this regard. There is no any whisper as regards commission of offence under Section 383 of the IPC which suggests that under the fear any valuable security or anything is extorted from the petitioner – complainant. Reading section 511 of the IPC it is alleged that all offences have been committed. It is needless to say that so far as offence under Section 511 of the IPC is concerned, the same is an inchoate and incomplete offence and it is needless to say that each offence is committed in four stages and whatever allegations leveled in the complaint does not fall within the category as prescribed and it depicts that merely an offence is an attempt.

[5.2] So far as offence under Sections 506 and 506(2) of IPC are concerned, the learned Apex Court in the case of **Mohammad Wajid and Anr. v. State of U.P. and Ors., reported in 2023 LiveLaw (SC) 624: 2023 INSC 683**, has held that:

> *"27. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant."*

It would be further apposite to refer the decisions of the Gujarat High Court as well as Apex Court rendered in case of (i) **Pravinbhai Becherbhai Vankar and Ors. vs State Of Gujarat** reported in **2007(1) GLR 337** and in case of (ii) **Manik Taneja & Anr vs State Of Karnataka & Anr.** reported in (**2015) 7 SCC 423,** wherein it

is observed that; *"in the case of criminal intimidation the threat of injury or the mens rea to cause alarm, or to compel a person to do or omit or to do something is must. Herein no any action or the act on the part of accused is lacking"*

[6.0] Insofar as proceeding under Section 202 of the CrPC is concerned, the scope and ambit of enquiry under Section 202 of the Code was succinctly laid down by Hon'ble Apex Court in the case of **Chandra Deo Singh vs. Prakash Chandra Bose alias Chabi Bose and another** reported in **AIR 1963 SC 1430**. For determining the question whether any process is to be issued or not?, what the learned Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for the conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry.

[7.0] The object of enquiry under Section 202(1) itself is to ascertain the truth or falsehood of the complaint, but the learned Magistrate making enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint and the statements made before him by persons examined at the instance of the complainant but herein complainant has failed to do so or produce any material or any evidence though ample opportunity was given.

[8.0] Similar view is also expressed by Hon'ble Supreme Court time and again in the case of **Pepsi Foods Ltd. vs. Special Judicial Magistrate** reported in **(1998)5 SCC 749 and** in the case of **National Bank of Oman vs. Barakara Abdul Aziz and Another** reported in

(2013) 2 SCC 488, the Hon'ble Supreme Court in paragraph 9 held as under:

> *"The duty of a Magistrate receiving a complaint is set out in Section 202 of the Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 of the Cr.P.C. is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient grounds for him to proceed further. The scope of enquiry under Section 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint;"*

[8.1] Further, the Hon'ble Supreme Court in the case of **Shivjee Singh vs. Nagendra Tiwary and Others** reported in **(2010)7 SCC 578** has also ruled in the same line. Thus, it is well settled proposition of law that one of the object, behind the provisions of Section 202 of the CrPC is to enable the learned Magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the learned Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant.

[8.2] In view of aforesaid proposition of law as well as the facts of the case on hand, it appears that herein, though ample opportunity was given to the petitioner to produce the evidence to prove his case, but

he failed to produce any evidence on record and even dispute is civil in nature and hence, both the Courts below have not committed any error.

[8.3] Further, in the case of **Mohit Singh vs. Reena Bagga & Ors.** rendered in **Criminal Appeal No.843 of 2024,** the Hon'ble Supreme Court has observed and held that extraordinary and inherent powers of the Court do not confer any arbitrary jurisdiction on the Court to act according to its whims and caprice. Even, the powers under Articles 226 and 227 of the Constitution are very much limited as per the law laid down by the Hon'ble Supreme Court in the case of **Radhe Shyam vs. Chhabi Nath** reported in **(2015) 5 SCC 423.**

[8.4] Herein, there is no any ground found to interfere either with the order passed by the learned Magistrate Court or learned Revisional Court and both the Courts below have not committed any error apparent on the face of the record or nothing emerges from the reasons assigned by the learned Magistrate any palpable, manifest or substantial error in interpretation of law is noticed in the order. Even, the powers under Article 227 of the Constitution are very much limited and as per the law laid down by the Hon'ble Supreme Court in the case of ***Radhe Shyam (Supra),*** wherein in paragraphs 18 and 23, it has been observed as under:

> *"18. Thus, it has been clearly laid down by this Court that an Order of civil court could be challenged under Article 227 and not under Article 226.*
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> *"23. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226."*

Considering the aforesaid fact, the order of the learned trial Courts could be challenged under Article 227 but not under Article

226 of the Constitution of India. Herein, the petitioner has sought the prayer to quash and set aside the orders passed by the learned Magistrate Court and Revisional Court, both fall under the supervisory jurisdiction of Article 227 of the Constitution of India. Considering the law laid down by the Hon'ble Supreme Court in the case of ***Radhe Shyam (Supra)***, the judicial orders of Courts are not amenable to writ jurisdiction under Article 226 of the Constitution and jurisdiction under Article 227 is distinct from the jurisdiction under Article 226 of the Constitution. At this stage it is apposite to refer to the decision of the Hon'ble Supreme Court in the case of **M/s. Garment Craft vs. Prakash Chand Goel** reported in **(2020) 4 SCC 181**, wherein in paragraph 77 it is held that High Court does not act as a Court of first appeal while exercising jurisdiction under Article 227 and to re-appreciate, re-weight evidence or fact except error apparent face on the record or perversity in findings.

[9.0] Further, the Hon'ble Apex Court in the case of **Malkeet Singh Gill vs. State of Chattisgarh** reported in **(2022) 8 SCC 204** conjointly with the observations made hereinabove as regards there being no any perversity in the impugned judgment and order of the learned trial Court as well as the learned Revisional Court, no interference is required.

[10.0] In wake of aforesaid discussion, no any ground is found or case is made out to interfere with the impugned judgment and orders. Hence, present petition being devoid of any merit is hereby dismissed in *limine*.

(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 02/07/2025 15:15:47