IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION - TO LODGE FIR/COMPLAINT) NO. 6461 of 2025
With
R/SPECIAL CRIMINAL APPLICATION NO. 6466 of 2025
With
R/SPECIAL CRIMINAL APPLICATION NO. 6467 of 2025
With
R/SPECIAL CRIMINAL APPLICATION NO. 6476 of 2025
With
R/SPECIAL CRIMINAL APPLICATION NO. 6477 of 2025

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DIPAKBHAI KAMLESHBHAI GOHIL THE SALES MANGER OF TIRTH GOLD PARTNERSHIP FIRM

Versus

STATE OF GUJARAT & ORS.

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Appearance:
MR BHAUMIK DHOLARIYA(7009) 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 : 03/07/2025
COMMON ORAL ORDER

[1.0] Since the issue involved in all these petitions is same and all the petitions are filed challenging the order passed by the learned Magistrate sending the complaint of the respective petitioners – original complainants against common respondent Nos.2 to 8, for inquiry under Section 202 of the Code of Criminal Procedure, 1973 (for short "CrPC") and which has been upheld by the learned Additional Sessions Judge, all these petitions are heard, decided and disposed of by this common oral judgment.

[2.0] By way of present petitions under Articles 14, 21, 226 and 227 of the Constitution of India, the petitioners – original complainants are

seeking quashing of order passed by the learned 15th Additional Senior Civil Judge and Chief Judicial Magistrate, Surat below Exh.1 as well as the order passed by the learned 12th Additional Sessions Judge, Surat. The details of order passed by the learned Magistrate as well as learned Additional Sessions Judge *qua* respective petitioners is as under:

Sr. No.	SCR.A No.	CR.MA No.	CR.RA No.
1.	6461/2025	2132/2024	228/2024
2.	6466/2025	2192/2024	230/2024
3.	6467/2025	1630/2024	231/2024
4.	6476/2025	60/2024	222/2024
5.	6477/2025	2131/2024	229/2024

For the sake of brevity and convenience, Special Criminal Application No.6461 of 2025 is taken as a lead matter and facts of the said petition are considered.

[3.0] That, the petitioner – original complainant is engaged in the business of buying and selling gold as well as processing gold as per the orders. Respondent Nos.2 to 8 – accused are also in the business of gold jewelry and they buy gold from various traders on credit in accordance with market norms and selling it in retail in the name of the partnership firm namely "Varman Jewelers". It is further the case that the accused after purchasing the gold from the respective petitioners did not pay the amount and with the same *modus operandi,* the accused duped and cheated the respective petitioners and therefore, the respective petitioners – original complainants filed detailed complaints with Umra Police Station against the accused for the offence under Sections 406, 409, 420, 114, 120(B) and 34 of the

IPC however, even after several efforts, the same was not registered as an FIR and therefore, the petitioners were constrained to file respective applications before the learned Magistrate under Section 156(3) of the CrPC for registration of FIR.

[3.1] The learned Magistrate vide the impugned order sent the complaint of the respective petitioners for police inquiry under Section 202 of the CrPC. Being aggrieved with the said order, the petitioners filed respective Criminal Revision Applications before the learned Additional Sessions Judge which was also dismissed and confirmed the order passed by the learned Magistrate.

[3.2] Being aggrieved with both the orders, the petitioners have filed respective petitions as detailed hereinabove.

[4.0] Heard learned advocate for the petitioner and learned APP for respondent No.1 – State of Gujarat.

[5.0] Learned advocate for the petitioner has submitted that the learned Magistrate has committed an error and no reason is assigned as to why the matter is not referred to or directed for investigation under Section 156(3) of the CrPC and has been sent by the learned Magistrate for inquiry under Section 202 of the CrPC. The learned Magistrate has not properly exercised the discretion despite of the fact that cognizable offence is made out. The learned Magistrate is not justified in not passing order for investigation under Section 156(3) of the CrPC. Considering the nature of offence, custodial interrogation of the accused persons is required though the learned Magistrate has ordered inquiry under Section 200 / 202 of the CrPC. To buttress his argument, learned advocate for the petitioner has

relied on the decision of Allahabad High Court in the case of **Hari Krishna Das Gupta vs. State of U.P.** reported in **2007 (25) RCR (Criminal) 120** and decision of Kerala High Court in the case of **Fameena .E vs. State of Kerala** reported in **2023(1) KLT 919** and submitted that discretion implied in Section 156(3) of the CrPC cannot be exercised arbitrarily and learned Magistrate having no authority to refuse to send the complaint for investigation. The learned Magistrate has wide power under Section 156(3) of the CrPC which ought to have been exercised to meet the ends of justice and therefore, he has requested to allow the present petitions and quash and set aside the order passed by the learned Magistrate and remit back the matters to learned Magistrate to pass appropriate order under Section 156(3) of the CrPC.

[6.0] *Per contra,* learned APP has vehemently opposed the present petitions and submitted that the learned Revisional Court as well as the learned Magistrate have assigned proper reasons while passing the impugned orders. The alleged incident took place in the year 2023 and considering the nature of allegation, learned Magistrate has come to conclusion that police inquiry is necessary prior to taking any cognizance or directing investigation under Section 156(3) of the CrPC. Considering the allegations, there is no need of any recovery or documentary evidence or any other material. As per the prevailing commercial practice, the proposed accused – respondent Nos.2 to 8 have received the gold ornament worth of Rs.8,64,062/- and thereafter, they have not made the payment and thereby they have committed the alleged offence punishable under Sections 406, 409, 420, 114, 120(B) and 34 of the IPC. The alleged incident is with regard to commercial transaction between the respective petitioners and “Varman Jewelers”. Hence, learned Magistrate come to conclusion

that the police inquiry is required for finding out whether the offence is made out or not and the learned Magistrate has properly exercised the discretion and has not committed any error. Even otherwise, there is no prejudice caused to the respective petitioners – original complainants by the learned Magistrate by merely passing an order calling for police report under Section 202 of the CrPC. Hence, he has requested to dismiss the present petitions.

[7.0] I have given thoughtful consideration to the arguments canvassed by learned advocates for respective parties.

[7.1] At the outset, perusing the allegation in all the complaints, it appears that the dispute is pertaining to a commercial transaction and the main grievance of the petitioner is that instead of sending the complaint for investigation under Section 156(3) of the CrPC, learned Magistrate has sent the complaint for police inquiry under Section 202 of the CrPC. The learned Magistrate is not duty bound to pass any order as per the ask of the complainant. Perusing the nature of allegation and the commercial transaction and in view of the law laid down by the Hon'ble Apex Court in the case of **XYZ vs. State of MP** reported in **(2023)9 SCC 705,** as regards exercise the powers under Section 156(3) of the CrPC, the Hon'ble Supreme Court has observed and held in paragraph No.19 as under:

> *"19. Second, we deal with the issue of the discretion granted to a Magistrate vis-a-vis the exercise of powers under Section 156(3) CrPC. On this issue, the High Court has held that the JMFC was not under an obligation to direct the police to register the FIR and the use of the expression "may" in Section 156(3) CrPC indicated that the JMFC had the discretion to direct the complainant to examine witnesses under Sections 200 and 202 CrPC, instead of directing an investigation under Section 156(3)."*

[7.2] Herein, learned Magistrate wants to inquire as to whether *prima facie* any cognizable offence is made out or not. Instead of directing the investigation under Section 156(3) of the CrPC, considering the nature of allegation, learned Magistrate has passed an order to call for the police report under Section 200 of the CrPC and even otherwise perusing the powers of inquiry vested with the learned Magistrate, it appears that no error has been committed by the learned Magistrate. In this regard it is apposite to refer to the decision of Hon'ble Supreme Court in the case of **Mohinder Singh v. Gulwant Singh** reported in **(1992) 2 SCC 213**, the Hon'ble Supreme Court observed thus:

> *"11. ...The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry."*

Thus, it is settled position of law that the enquiry under Section 202 of the CrPC is not full-fledged trial, but only limited to very the *prima facie* truthfulness in the allegations made in the complaint as to whether there is any sufficient ground to proceed against accused or

not. The enquiry under Section 202 of the CrPC is to be held 'absentia' of accused and his defence version is not required to be gone into to determine whether sufficient grounds exist to proceed against accused.

[8.0] 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. 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.

[9.0] In view of above, learned Magistrate has properly exercised the discretion and merely as per the whims of the complainant or only because the complainant has asked for an order under Section 156(3) of the CrPC, the learned Magistrate is not duty bound to pass any order under Section 156(3) of the CrPC more particularly when the offence is of commercial transaction and alleged offence is under Sections 406, 409 and 420 of the IPC and in view of misuse of power of the police and to give a cloak of criminality to the commercial transaction.

[9.1] Even otherwise, considering the directions given by the Hon'ble Supreme Court in the case of **Rikhab Birani & Anr. vs. State of Uttar Pradesh & Anr.** reported in **2025 INSC 512** and as the allegation of on approval (Jangad) gold is given, and neither paid money nor returned articles and hence, as to whether an act falls in the category of cheating or breach of promise is also required to be considered and even the offence of cheating and criminal breach of trust cannot go together and therefore, in view of the decision of the Hon'ble Supreme Court in the case of **Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr.** reported in **2024 INSC 626,** the learned Magistrate has properly exercised the jurisdiction and there is no any prejudice caused to the present petitioners – original complainants as the learned Magistrate has only called for a police report and has not turned down or dismissed the application or complaint of the present petitioners. Even, the learned Revisional Court has not committed any error while dismissing the respective revision applications.

[10.0] Now, so far as the decisions relied on by the learned advocate for the petitioners on the case of **Hari Krishna Das Gupta (Supra)** and **Fameena .E (Supra)** are concerned, it is worth to mention that the facts of the said cases were different and therefore, said authorities would not avail any assistance to the petitioners in the peculiar facts of the case on hand considering the fact of case on hand.

[11.0] At this stage, it is appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Radhe Shyam vs. Chhabi Nath** reported in **(2015) 5 SCC 423**, wherein it is observed and held that 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 also 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 on the face of the record or perversity in findings and when second view is available, Court should not overturn the findings.

[11.1] 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 Appellate Court, no interference is required.

[12.0] In wake of the aforesaid discussion, the learned Magistrate as well as the learned Revisional Court have not committed any error while passing the impugned orders and therefore, no interference is called for by this Court in exercise of powers under Article 226 and 227 of the Constitution of India. Hence, present petitions being devoid of any merit stand **dismissed**.

(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 04/07/2025 18:08:27