

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 850 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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KAUSHALBHAI JAGDISHBHAI ASODIYA

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR. MANTHAN V SHUKLA(10021) for the Applicant(s) No. 1

MS RATNA VORA(2251) for the Respondent(s) No. 2

MR. ROHAN SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 22/07/2026

ORAL JUDGMENT

1. By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), the petitioner has prayed to quash and set aside the FIR being CR No.I-11191041211787 of 2021 registered with the Shaherkotda Police Station, Ahmedabad City, for the offence punishable under Sections 469, 500, 501, 120(B) and 114 of the Indian Penal Code, 1860 (for short “IPC”) and to quash all other consequential proceedings arising therefrom.

2. It is the case of the petitioner that the impugned complaint is filed at the instance of respondent No.2 – original complainant, as he

was working as Public Notary and also the member of Bahujan Samaj Party and also running NGO and also publishes magazine namely “Nyayik Samiksha”. On 05.07.2021, the brother of the complainant received WhatsApp message which was fake news from Nimesh Dodiya (accused No.1 in the FIR) and thereafter, the brother of complainant asked the accused No.1 as to in which newspaper the news cutting which he forwarded on WhatsApp was published. As accused No.1 did not reply to the brother of complainant and accused No.1 used to write message against the complainant and brother of the complainant in WhatsApp group of community. So, the brother of the complainant and complainant tried to pacify the situation on 02.07.2021 and at that time accused No.1 got angry and started quarreling with complainant and his brother and thereafter cross complaint was filed by both the sides at Shaherkotda Police Station. Subsequently, on 06.07.2021, the complainant got fake newspaper cutting on WhatsApp from his friend. Upon inquiry, he did not reply as to from whom he received the said newspaper cutting and thereby circulating the said information, he committed the offence of defamation of present complainant. Thereafter, it is alleged that accused No.3 was repeatedly posting messages on social media and defamed the respondent No.2. Thus, it is alleged that accused persons in conspiracy and connivance of each other have circulated the fake news with intention to defame the complainant and his political party namely Bahujan Samaj Party. Hence, in this regard complaint

came to be filed. Except this no allegations are levelled.

3. Heard, learned advocate Mr. Manthan V. Shukla for the petitioner, learned advocate Ms. Ratna Vora for the respondent No.2 – complainant and learned Additional Public Prosecute Mr. Rohan Shah for the respondent – State.

4. The role attributed to the present petitioner is, only forwarding a photograph of a newspaper namely Young Leader, Ahmedabad, which was forwarded to Nishyal Jashavantbhai Sangani who in turn forwarded the said message to the complainant. Thus, to attract the provisions of Section 469 of the IPC, a person has to first forge a document with an intention to harm the reputation or knowing that it is likely to be used for that purpose (harming reputation). However, from the reading of the entire FIR as well as from the papers of chargesheet, both are conspicuously silent with regards to harming reputation. Even if the allegations are taken as it is on the face of it do not constitute offence under Section 469 of the IPC. Not an iota of evidence is collected during investigation, nor is there any whisper in the FIR nor in the counter of the chargesheet, which would reveal attracting the provisions of Section 469 of the IPC.

5. The allegation is that the complainant received photo of one newspaper cutting in WhatsApp, however, the present petitioner has only forwarded it to one Nishyal Sangani, who had also preferred a Criminal Misc. Application for quashing and setting aside the FIR

being No.859 of 2022, which came to be allowed by order dated 09.09.2024 passed by coordinate bench of this Court, who in turn had forwarded the said newspaper cutting to the complainant, except for this no role is attributed to the present petitioner. He has not indulged into circulating the said news if at all is if it is fake, coupled with the fact that the publisher and/or the editor of the said newspaper are not made accused in the impugned FIR or in the chargesheet also, who have allegedly published the alleged defamatory statement as per the complainant. But, for the role of forwarding the said newspaper cutting to co-accused Mr. Nishyal Sangani, no role is attributed to the present petitioner.

6. Thus, when no offence under Section 500 or 501 of the IPC is made out against the present petitioner, more particularly, for lodging of a complaint for attracting provisions of Sections 500 and 501 of the IPC, a complaint under Section 2(d) of the Cr.P.C. is required to be lodged by the aggrieved person before the concerned jurisdictional Magistrate and that no FIR is maintainable as both these offences are non-cognizable offence.

7. Thus, what has been forwarded by the present petitioner would also not fall within the four corners of the definition of Section 469 of IPC namely defamation. Since the FIR and the papers of the chargesheet are conspicuously silent, as to how the complainant and or his party is/are harmed defamed. Thus, it cannot be said that the petitioner has forged any news item, more particularly, there is

nothing on record from the papers of investigation that such news item was forged by the present petitioner. Under the circumstances, provisions of Section 469, 500, 501, 120(B) and 114 of the IPC are not made out.

8. The principle governing quashing of the FIR are well settled in the case of **State of Haryana Vs. B.Bhajanlal & ors.**, reported in **AIR 1992 SC 604**, wherein, the Hon'ble Apex Court summed up the proposition of law in paragraph 102, which reads as under:-

“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the code.

(3) Where, the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out the case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under

S.155(2) of the Code.

(5) Whether, the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where, there is an express legal bare engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. Considering the settled principle as stated in the above referred case, though the powers under Section 482 of the Cr.P.C. are wide, however, are to be exercised with great caution. The Court must be careful while exercising its power based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution, and the High Court should normally refrain from giving any *prima facie* decision in a case where the facts are hazy or incomplete, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of the magnitude and cannot be seen in their true

perspective without sufficient material. However, there are no hard-and-fast rules with regards to the cases where the High Court can exercise its extraordinary jurisdiction for quashing the proceedings at any stage.

10. Considering the proposition laid down by the Hon'ble Supreme Court in the case of State of Haryana (supra), the present case *prima facie* falls within the parameters laid down in paragraph 102 of the said case, more particularly, 5 and 7. If the present proceedings are allowed to be continued against the petitioner, would amount to abuse of process of law, and thus, the case on hand is a fit case to exercise the powers under Section 482 of the Cr.P.C.

11. In view of the reasons stated herein above present petition is allowed. The impugned FIR being CR No.I-11191041211787 of 2021 registered with the Shaherkotda Police Station, Ahmedabad City, alongwith all its consequential proceedings is quashed and set aside qua the present petitioner only.

12. Rule is made absolute to the aforesaid extent. Direct service is permitted.

NITIN MAKWANA

(P. M. RAVAL, J)