

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 31287 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE P. M. RAVAL**

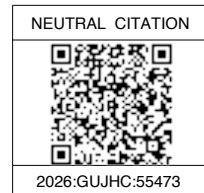
Approved for Reporting	Yes	No
		✓

Appearance:

MR RASESH H PARIKH(3862) for the Applicant(s) No. 1
MR.HEMANG H PARIKH(2628) for the Applicant(s) No. 1
MR. K. M. ANTANI, APP for the Respondent(s) No. 2
SUDHANSHU A JHA(8345) for the Respondent(s) No. 1

CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL**Date : 01/09/2026****ORAL JUDGMENT**

1. Petitioner before this Court has invoked the provisions of Section 482 of the Code of Criminal Prosecutor, 1973 (for short “Cr.P.C.”), praying to quash the set aside the FIR being C.R. No.I-83 of 2016, dated 23.08.2016, lodged before the Elisbridge Police Station, Ahmedabad City, for the offences punishable under Sections 354, 354A, 354C, 354D and 114 of the Indian Penal Code, 1860 (for short “IPC”), alongwith the consequential proceedings arising therefrom.



2. The facts as narrated in the FIR in nutshell are that in view of contract dated 20th June 2015 entered between the Federation of Industry and Association and G. J. Advertising and Management Services Private Limited, the informant - respondent No.1 herein is entitled to claim recovery of Rs.22,00,000/- from the Federation of Industry and Association. It is further stated in the FIR that WhatsApp group was created on 27.07.2016 to inform all the members of the group about the alleged misbehaviour with the informant - respondent No.1 herein and misappropriation of money by Arvind Gajera. It is also alleged that Kiritbhai Patel later in a day came to the office of the informant and stated that her message in WhatsApp group was inappropriate and that now she has to come to the flat of Arvind Gajera failing which no money will be paid to her. It is also alleged that, on 21.07.2016, i.e. 6 days prior to the lodging of the FIR, she went to meet the present petitioner. However on that day the petitioner was not present at the office of Federation of Industries and Association, as some other meeting was also going on at that time, and in the said meeting, Arvind Gajera was present and in view of the presence of the informant, Arvind Gajera left the meeting. Thereafter, the informant informed Mr. Jagdish Ramani about the alleged misbehaviour of Arvind Gajera. It is further stated that Arvind Gajera intercepted her at 6:30 evening and verbally abused her, threatened and also reiterated that she will not be paid the money, he has also molested her previously and physically and mentally harassed her.



2.1. It is further averred in the FIR that somewhere in December 2015, during various events at Jamnagar, Vapi, Rajkot, Surat and Vadodara, etc. Arvind Gajera inappropriately behaved and touched the informant. It is also averred in the FIR that the informant then contacted Kiritbhai Patel and the present petitioner and informed about the alleged misbehaviour of Arvind Gajera, and on informing present petitioner, he laughed away what was stated by the informant to him and also the petitioner stated that if she wanted to progress in the business, she would have to succumb to such type of demands.

2.2. Hence, the present petition.

3. Learned advocate Mr. Rasesh Parikh for the petitioner would submit that except for the bare allegation that the present petitioner laughed away to what was informed to the petitioner herein, there are no any allegations with regard to outraging the modesty of the informant, inasmuch as, the only allegations in the FIR and from the papers of the charge-sheet are to the effect that the present petitioner did not give heed to what was stated by the informant and asked her to accept such type of demands if she wants to grow and develop in business.

3.1. Learned advocate would further submit that the FIR is nothing but an pressure tactics to see that the outstanding amount is recovered by hook or crook by roping in the present petitioner.

Learned advocate would further submit that the informant has initially chosen not to disclose the alleged date of offence or misbehaviour by Arvind Gajera when she created WhatsApp group. However, subsequently, in FIR states that in somewhere in December 2015, Arvind Gajera misbehaved with her during their visit at different districts of Gujarat. Even if the said alleged misbehaviour took place with the informant, the FIR is lodged almost after 8 months without there being any averments against the present petitioner with regard to outraging her modesty or sexual harassment or voyeurism or stalking. Thus, even if the averments are taken on the face of it, do not constitute offence as stated hereinabove, as far as role of the present petitioner. Hence, argued to allow the present petition.

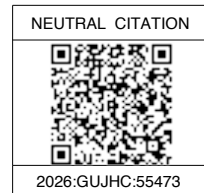
4. *Per Contra*, learned advocate Mr. Sudhanshu Jha for the informant - respondent No.1 herein would submit that it is an undisputed fact that Arvind Gajera against whom the complaints were made, who was the then Secretary of the Association is a very good friend of the present petitioner, and thus, the petitioner despite being head of the said institution had never acted on the complaints and has completely failed to perform his duties, and on the contrary has pressurized the informant to compromise with the illegal demands of the Secretary.

4.1. Learned advocate would further submit that the informant had



entered into a contract with the Federation of Industries (FIA) for ‘GUJTECH-2016 Industrial Expo’, and the said contract was signed by the present petitioner being President of the said Federation. Thus, the present petitioner is involved as a part and parcel of the said alleged crime and such crime was committed at the instance of the present petitioner which would clearly reflect the intention on the part of the present petitioner too.

4.2. Learned advocate would further submit that by hatching conspiracy against the respondent, the present petitioner has also involved himself in the very crime, and despite of having continuously informed about the inappropriate behaviour and demand of Arvind Gajera and that of one Kirit Patel, the present petitioner, rather than probing into the matter, had continuously ignored the complaint made by the informant, and despite of there being continuous oral and written complaints made by the present informant to the petitioner, no heed was given, and when the charge-sheet is already filed, and when the present petitioner was also present in the guest house as well as the hotel where the alleged incident took place, even then, the present petitioner, rather than restraining other accused, had asked the informant to settle the matter and not to disclose with regards to the alleged incident to anyone, and has thus argued that *prima facie* case is made out against the present petitioner, and has prayed to reject the present petition.



5. Learned Additional Public Prosecutor Mr. K. M. Antani would submit that that the CCTV footage of the Dharamshala at Jamnagar could not be retrieved because of the fact that it does not store recording beyond period of 15 days, and as such, presence of the present petitioner could not be collected during investigation qua the allegations made against Arvind Gajera is concerned at Jamnagar. However, would submit that with regards to the incident that took place at Surat at Ginger Hotel, in the CCTV footage, the presence of the petitioner in the restaurant is not made out. However, his stay at the Ginger Hotel is surfacing on record, and has thus argued that when the present petitioner was also present when the alleged offence took place, provisions of Section 107 would be squarely attracted, making him punishable under Section 114 of the IPC, and thus, argued to reject the present petition.

6. Heard learned advocates for the respective parties. This Court has gone through the FIR as well as paper of charge-sheet appended with the petition, as well as handed over by learned Additional Public Prosecutor for the perusal of this Court. Except for the presence of the present petitioner hotel at Surat, however, was not present in the restaurant when the alleged incident took place between Gajera and the informant - respondent No.1 herein, would be significant. Even from the reading of the entire FIR or even subsequent statement of the informant dated 24.08.2016, there is no direct overt act attributed to the present petitioner in any of the



offences attracting provisions of Sections 354, 354A, 354C or 354D of the IPC. However, what has been argued is that despite of having informed the present petitioner with regards to the alleged incidences by the other accused persons, the present petitioner being head of the institute did not give heed to such complaints, and on the contrary, informed the respondent No.1 herein - original informant (victim) that if she wants to grow in her business, she has to compromise with such polluted demands and also laughed on. Therefore, at the outset, what is required to be noted is, as to what does abetment means.

7. It would be apt to refer to Section 107 of the IPC which reads as under:

“107. Abetment of a thing -

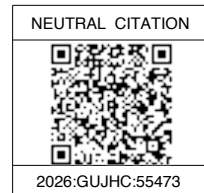
A person abets the doing of a thing, who -

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

8. Thus, from reading of the aforesaid Section, what is clear is that for making the present petitioner liable for abetment by intentional aiding by an act or illegal omission, or instigation, or any



conspiracy, or illegal omission in pursuance to that conspiracy, in order to facilitate the commission of the act of offence, the presence of the abettor either before the commission of the crime or offence, for facilitating commission of the offence, or at the time of commission of an act constituting the offence is necessary for making out an offence of abetment. Thus, the intention should be to aid the commission of a crime. Merely, by uttering the words that will have to succumb to such polluted demands if she wants to grow in the business, without there being any intention, will not make the act of abetment of an offence if the petitioner did not know that the offence was being committed or contemplated. What is seen is that after having committed such alleged offence, it was informed to the present petitioner who did not give heed to such complaints. Thus, abetment by omission would only be punishable if such omission were an illegal omission, that is breach of a legal obligation. It is also relevant to note that *mens rea* is an essential element for offence of abetment. The lodging of the FIR by the informant by taking recourse of law does not aid the commission of an offence by the present petitioner, though it may amount to concealment of the acts of the accused of an offence already perpetrated. Mere negligence or carelessness on the part of the present petitioner cannot be termed as an abetment.

9. Under the circumstances, the present petition is allowed. The FIR being C.R. No.I-83 of 2016, dated 23.08.2016, lodged before



the Elisbridge Police Station, Ahmedabad City, alongwith the consequential proceedings arising therefrom are hereby quashed and set aside qua the present petitioner only.

10. It goes without saying that what has been stated here is qua the present petitioner only, and would not come in the way of the trial Court to proceed in accordance with law, without being influenced by the present order.

11. Rule is made absolute to the aforesaid extent. Direst service is permitted.

NITIN MAKWANA

(P. M. RAVAL, J)