

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 11635 of 2021**

With

R/CRIMINAL MISC.APPLICATION NO. 11419 of 2021

With

R/CRIMINAL MISC.APPLICATION NO. 11422 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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NAMAN GYANCHAND PIPARA

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR MANISH R BHATT, SENIOR ADVOCATE with

MR MUNJAAL M BHATT, ADVOCATE for

M R BHATT & CO. for the Applicant

MR CHINTAN DAVE, APP for the Respondents – State Authorities

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CORAM: HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 27/09/2023

CAV JUDGMENT

1.1 By way of these applications under Section 482 of the Code of Criminal Procedure, 1973 as well as under Section 226 of the Constitution of India, the applicant seeks quashment of the identical but separate FIRs impugned being C.R. No.02 of 2021, No.03 of 2021 and No.01 of 2021, respectively, registered with the ACB Police Station, Bharuch for the offences punishable under Sections 409, 465, 466, 467, 471, 477A and 120B of the Indian Penal Code and Sections 12, 13(1)(A) and 13(2) of the Prevention of Corruption Act.

1.2 Since that the applicant is the same in all the applications and the allegations are also same in all three complaints impugned, therefore, all these applications are heard and decided together with consent of the learned advocates for the respective parties.

2. The brief facts of the prosecution case are epitomized as under:

The work of *Khet Talavadi* at various different survey numbers carried out by the Gujarat Land Development Corporation, Bharuch at village : Kharach, Taluka : Hansot, District : Bharuch. has been inspected by the authority, wherein it is found that the applications were made on

behalf of the farmer without their knowledge by the officials of the said Corporation and thereby misused their powers, shown said *Khet Talavadi* on papers, shown wrong measurement in the record, made payment in the account of the particular Contractors, created false record in connivance with the unqualified employee/s appointed by the Pipara & Company, a Chartered Accountant Firm, who, thereby committed an offence of the Chartered Accountant Act. Hence, the impugned complaints.

3. Heard learned senior advocate Mr. Manish R. Bhatt with learned advocate Mr. Munjaal M. Bhatt for M.R. Bhatt & Company for the applicant and learned Additional Public Prosecutor Mr.Chintan Dave for the respondents – State Authorities, at length.

4.1 Learned senior advocate Mr.Bhatt for the applicant has submitted that the present applicant is a well-known leading Chartered Accountant and his name is falsely implicated in the offence in question. He has submitted that he is a member of the formulating, drafting and issuance of forensic audit standards by the Institute of Chartered Accountants of India. He has submitted that the Firm of the applicant is situated in New Delhi and therefore, he has to appoint official staff in Gujarat. He has submitted that the

role of the office of the Chartered Accountant was to carry out 10% physical verification of the soil work carried out by each charge on the filed on a random basis and hence, due to his alleged negligence, the officers and contractors were able to do fraud. He has submitted that there is no whisper about the alleged fraud committed by the applicant in the impugned FIRs. He has submitted that out of the fraudulent transactions, there is no whisper about siphoning and/or pocketing money by the applicant.

4.2 He has submitted that the allegations against the applicant in the impugned FIRs is to appoint one Miteshbhai Dilipbhai Trivedi as an employee, who is not a qualified person and therefore, the applicant has committed an offence under the Chartered Accountant Act. He has submitted that except this, there is no allegation against the applicant at all in the entire FIRs.

4.3 He has submitted that this is a scam committed by the officers / staff of the Gujarat State Land Development Corporation in connivance with the so-called contractors and thereby siphoning money of the State. He has submitted that if we look from the beginning, it seems that the officials of the Corporation has made an application in the name of the farmers on their own, created records of 'Khet Talavadi' on

papers and raised fabricated bills of work made by the so-called contractors and paid money to the so-called contractors, who are very closed to them. He has submitted that in this entire chain, there is no role of the Chartered Accountant in the process except to audit the account papers. He has submitted that all the officials/staff are very much aware of the entire process and therefore, they have cleverly prepared the entire chain of papers as if the farmers have made an application for getting the benefits of the scheme floated by the State Government. They have been prepared and audited by the firm of the applicant. He has submitted that except this, there cannot be any other role of the CA firm in the entire transaction. He has submitted that as per the role of the CA firm, it has to verify all the account-related papers only. He has submitted that out of the entire transaction, no single rupee is credited or given to the CA firm by the Corporation as there is a very limited role of the CA firm. He has submitted that since the applicant is a leading Chartered Accountant country, to tarnish his image, his name is implicated in the offence in question.

4.4 He has further submitted that the entire allegations are based on the action of the officials of the Corporation itself. He has submitted the looking to the FIRs, there is a motive and preplanned of the officials/staff of the

Corporation behind it. He has submitted that they have created false and fabricated documents on the papers, knowing fully well that the work is on the papers only and submitted to the CA firm for pre-audit purpose, which the staff of the firm has verified. He has submitted that the CA firm is not the expert to inspect the site or to verify the actual work carried out by the other persons. He has submitted that it is not the role of the CA firm also. It is their role, duty and responsibility to verify the actual work. The CA firm has to verify the accounts on papers only, which the staff of the applicant has done. He has submitted that if such complaints are filed, then no professional can save from any work done by the officials / staff of the offices.

4.5 He has also submitted that there is no whisper about the alleged offence committed by the applicant in the FIRs impugned. The offence registered against the applicant in the impugned FIRs is under the Prevention of Corruption Act as well as under the Indian Penal Code. He has submitted that no offence is attributed to the applicant looking to the entire allegations levelled in the impugned FIRs. The allegations against the applicant is to appoint unqualified person only. He has submitted that the applicant has neither committed any offence under the Prevention of

Corruption Act nor under the Indian Penal Code. He has submitted that appointing unqualified staff would not amount to an offence under the Indian Penal Code or under the Prevention of Corruption Act and therefore, the applicant has not committed any offence as alleged in the impugned FIRs. He has submitted that all these applications may be allowed by exercising the powers under Section 482 of the Code of Criminal Procedure, 1973 in favour of the applicant.

4.6 In support of his submissions, he has relied upon the following decisions :

- (i) *(2001) 6 SCC 181 - T.T. Antony versus State of Kerala (Paras : 25 to 27)*
- (ii) *(2013) 6 SCC 348 – Amitbhai Anilchandra Shah versus CBI (Paras : 58.3 to 58.5 and 58.9)*
- (iii) *(2020) 14 SCC 12 – Arnab Ranjan Goswami versus Union of India (Paras : 31, 33, 37)*
- (iv) *Criminal Misc. Application No.16909 of 2019, dated 13.09.2019 – Pravinbhai Balchandrabhai Premal versus State of Gujarat*
- (v) *Criminal Misc. Application No.4421 of*

2021, dated 30.04.2021 – Bhaumik Dilipkumar Gandhi versus State of Gujarat

(vi) Relevant provisions of the Chartered Accountants Act, 1949.

5.1 Learned APP Mr.Dave for the State has submitted that there is a prima facie offence made out against the applicant and therefore, this application may be rejected. He has submitted that the applicant being a partner of the CA firm has not properly carried out its work and therefore, these applications may be rejected. He has also submitted that the firm of the applicant has to carry out the inspect of soil work which they have not done. He has submitted that this was the condition of the contract between the CA firm and the Corporation. He has submitted that there was a breach of contract and thereby the CA firm has committed an offence. He has submitted that there was connivance with the applicant, his staff members and the officers / staff as well as the contractors in siphoning Government money. He has submitted that there was a pre-planned fraud committed by the all in connivance with each other. He has submitted that ultimately, the Government is the sufferer. He has submitted that they have pocketed huge money by committed such fraud. He has submitted that they have created false

and fabricated documents, pre-audited it and paid money to the so-called contractors. He has submitted that the applicant has appointed unqualified person as his staff, got pre-audited by him, which seems the connivance in the offence.

5.2 He has submitted that there was a condition in the contract between the CA firm and the Corporation that CA firm has to carry out 10% soil work inspection at the place. He has submitted that such inspection was not carried out by the CA firm, but made endorsement about it and on that basis, the payment was made to the so-called contractors. He has submitted that there is no such '*Khet Talavadi*' at the place of offence at all. All the work is on the papers only. He has submitted that there is motive and pre-planned by all the accused in connivance with each other. He has submitted that it is a collective offence and hence, we cannot withdraw anyone from the chain. He has submitted that the firm of the applicant has raised bills for four quarters, for which, he has in fact carried out the work of three quarters only. He has submitted that there are other about 62 complaints registered in such scam. He has submitted that at this stage, these applications may not be entertained and are required to be rejected.

6.1 I have considered the rival submissions made by

learned advocates for the respective parties. I have perused the documents available on record. From record, the following undisputed facts are emerged :

- The State Government has floated the '*Khet Talavadi*' Scheme in the State.
- The Gujarat State Land Development Corporation has followed the said Scheme.
- The officers / staff of the Corporation at Bharuch have made false and fabricated applications in the name of the various farmers.
- The said applications were signed in the name of the farmers by such officials.
- The said farmers were not aware about it.
- After making such false applications, the officers of the Corporation have prepared various papers as if the farmers have made the applications.
- The measurement of '*Khet Talavadi*' also made on the papers without visiting there, because the farmers were not aware about it.
- The 'Maap Pothi' (Measurement Book) is also prepared by the officers of the Corporation falsely.
- The completion of work is also shown by the officers of the Corporation on papers.
- The officers of the Corporation have raised bills

for the said work.

- The payment is finally made to the so-called contractors by the Corporation for the work which was not done at all.
- The applicant is a Chartered Accountant by profession runs a Chartered Accountant Firm at New Delhi.
- There was a work agreement between the applicant's firm and the Corporation for audit work.
- The CA firm has appointed various staff members in Gujarat.
- The pre-audit work was carried out by the firm of the applicant.
- On the basis of the pre-audit work, the payment was made by the Corporation to the so-called contractors.

These are the undisputed facts emerged from the record, which would keep in mind while deciding these applications.

6.2 Considering the submissions made at the bar by the learned advocates for the respective parties, this Court poses the following questions in mind :

- What is the role of Chartered Accountant ?
- Can the Chartered Accountant firm appoint for the inspection work of field ?
- Is the Chartered Accountant firm an expert to inspect the soil work at filed ?
- Would any motive be there of the Chartered Accountant firm in such scam ?

6.3 Looking to the allegations made in the impugned FIRs against the applicant, at this stage, it would be fruitful to refer to briefly the provisions of the Indian Penal Code as well as the Prevention of Corruption Act, which are as follow in brief :

<i>Indian Penal Code</i>	
Section	In Brief
409	Criminal breach of trust by public servant, or by banker, merchant or agent.
463	Forgery.
465	Punishment for Forgery
466	Forgery of record of Court or of public register, etc.

467	Forgery of valuable security, will, etc.
471	Using as genuine a forged [document or electronic record].
477A	Falsification of accounts.
120	Criminal Conspiracy.
120B	Punishment of criminal conspiracy.
<i>Prevention of Corruption Act</i>	
12	Punishment for abetment of offences.
13(1)(a) & 13(2)	Criminal misconduct by a public servant.

6.4 Further, there is an allegation in the impugned FIRs upon the applicant qua the provisions of Sections 26 and 28 of the Chartered Accountant Act, which is as under :

“26. Unqualified persons not to sign documents -

(1) No person other than a member of the Institute shall sign any document on behalf of a 4 [chartered accountant in practice or a firm of such chartered accountants] in his or its professional capacity.

(2) Any person who contravenes the

provisions of sub-section (1) shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extend to two lakh rupees or with both.

28. Sanction to prosecute -

*No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council
or of the Central Government.”*

6.5 On bare perusal of the impugned FIRs, the following points are emerged for consideration of this Court :

- The officers / staff of the Gujarat State Land Development Corporation have made false and fabricated applications for getting the monetary benefits of the Scheme known as ‘*Khet Talavadi*’ floated by the State Government.

- The farmers on whose names the said applications were made, were not aware about the same.
- The fabricated measurement books were also prepared by the officers / staff of the Corporation.
- The work was shown on the papers only.
- The bills were raised by the officials of the Corporation.
- The same were pre-audited by the firm of the applicant.
- The amount was paid to the various contractors by the Corporation to their accounts directly.
- No money is paid to the applicant for the said labour work of '*Khet Talavadi*' by the Corporation.
- It is not the job of the Chartered Accountant firm also.
- The applicant's firm has to verify the papers and bills raised by the Corporation.
- The said bills were checked by the applicant's firm on the basis of the material available on record at that time.
- The applicant is not known all the officers / staff of the Corporation as well as the so-called contractors.
- There is no connection between the applicant and the officers/staff of the Corporation as well as the contractors at all.

- There is no money transaction between the contractor and the applicant at all and the officers / staff of the Corporation at all.
- Except the fees of the chartered accountant, no money is credited to the account of the applicant or its firm.
- The applicant is a leading Chartered Accountant of the country.
- The applicant firm is situated at New Delhi.
- The applicant's firm has appointed various persons in Gujarat to carry out its work as Chartered Accountant as well as permitting article-ship for Chartered Accountant.
- The role of the applicant's firm was very limited and was not actually connected with the field work and only to the extent the audit of vouchers and records.
- How can they be experts in soil inspection ?
- How can they visit even the field ?
- If there is a lack of appointing unqualified persons in the firm to carry out audit work, there are provisions in the Chartered Accountant Act.
- Prima facie, no offence is made out against the applicant.
- If the State Authorities book such professionals in

every such offences, there would be an administrative chaos and no leading professional would like to work with the State Government or its offices.

- It would be always open for the concerned Authorities to take appropriate steps against the firm of the applicant under the Chartered Accountant Act, if they feel any negligence on the part of the firm of the applicant.
- No prior sanction as required under Section 28 of the Chartered Accountant Act.

6.6.1 At this stage, it would be fruitful to refer to the decision of the Hon'ble Apex Court in the case of T.T. Antony (supra), more particularly paragraphs : 25 to 27 thereof, which are as under :

“25. Where the police transgresses its statutory power of investigation the High Court under Section 482 Cr.P.C. or Article 226 / 227 of the Constitution and this Court in appropriate case can interdict the investigation to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

26. *In State of Haryana v. Bhajan Lal*, 1992 Suppl (1) SCC 335 : (1992 AIR SCW 237 : AIR 1992 SC 604 : 1992 Cri LJ 527), after exhaustive consideration of the decisions of this Court in *State of West Bengal v. Swapan Kumar Guha*, 1982(1) SCC 561 : (AIR 982 SC 949 : 1982 Cri LJ 819); *S. N. Sharma v. Bipen Kumar Tiwari*, 1970(1) SCC 653 : (AIR 1970 SC 786 : 1970 Cri LJ 764); *R. P. Kapur v. State of Punjab*, 1960(3) SCR 388 : (AIR 1960 SC 866 : 1960 Cri LJ 1239); *Nandini Satpathy v. P.L. Dani*, 1978(2) SCC 424 : (AIR 1978 SC 1025 : 1978 Cri LJ 968) and *Prabhu Dayal Deorah v. District. Magistrate, Kamrup*, 1974(1) SCC 103 : (AIR 1974 SC 183 : 1974 Cri LJ 286), approving the judgment of the Privy Council in *Khwaja Nazir Ahmad's case* (AIR 1945 P C 18 : 1945 (46) Cri LJ 473) (*supra*), it was concluded in para 102 (of Supp SCC) : (Para 108 of AIR, Cri LJ) as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of

decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channylised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

(4) Where the allegations in the FIR 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 Section 155(2) of the Code.

(5) Where the allegations made in

the FIR 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 proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and for 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 mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

The above list, as noted, is illustrative and not exhaustive.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the seeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) Cr. P. C. it would clearly be beyond the purview of Sections 154 and 156 Cr. P. C. nay, a case

of abuse of the statutory power of investigation in a given case. In our view a case of a fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 Cr. P. C. or under Article 226/227 of the Constitution.”

6.6.2 Further, it would also be fruitful to refer to the decision of the Hon’ble Apex Court in the case of Arnab Ranjan Goswami (supra), more particularly paragraphs : 31, 33 and 37 thereof, which are as under :

“31. The Court held that "there can be no second FIR" where the information concerns the same cognisable offence alleged in the first FIR or the same occurrence or incident which gives rise to one or more cognisable offences. This is due to the fact that the investigation covers within its ambit not just

the alleged cognisable offence, but also any other connected offences that may be found to have been committed. This Court held that once an FIR postulated by the provisions of Section 154 has been recorded, any information received after the commencement of investigation cannot form the basis of a second FIR as doing so would fail to comport with the scheme of the CrPC. The court observed:'

“18...All other information made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the first information report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 CrPC. No such information/statement can properly be treated as an FIR and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the

scheme of CrPC."

33. The Court held that barring situations in which a counter-case is filed, a fresh investigation or a second FIR on the basis of the same or connected cognisable offence would constitute an "abuse of the statutory power of investigation" and may be a fit case for the exercise of power either under Section 482 of the CrPC or Articles 226/227 of the Constitution.

37. In the present case, all the FIRs or complaints which have been lodged in diverse jurisdictions arise out of one and the same incident - the broadcast by the petitioner on 21 April 2020 on R Bharat. The broadcast is the foundation of the allegation that offences have been committed under the provisions of Sections 153, 153A, 153B, 295A, 298, 500, 504 and 506 of the IPC. During the course of the hearing, this Court has had the occasion, with the assistance of the learned Senior Counsel, to peruse the several complaints that were filed in relation to the incident dated 21 April 2020. They are worded in identical terms and leave no

manner of doubt that an identity of cause of action underlies the allegations leveled against the petitioner on the basis of the programme which was broadcast on 21 April 2020. Moreover, the language, content and sequencing of paragraphs and their numbering is identical. It was in this backdrop that Mr Kapil Sibal, learned Senior Counsel fairly submitted (in our view correctly) that this Court may proceed to quash all the other FIRs and complaints lodged in diverse jurisdictions in the States, leaving open, however, the investigation in respect of the FIR 238 of 2020 dated 22 April 2020 transferred from the Police Station Sadar, District Nagpur City to NM Joshi Marg Police Station in Mumbai.”

6.6.3 Further, it would also be fruitful to refer to the decision of the Hon’ble Apex Court in the case of *State of Haryana V/s Bhajan Lal* reported in AIR 1992 SC 604, wherein the Hon’ble Supreme Court has observed thus -

“In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.XIV and of the principles of law enunciated by this court in a series of

decisions relating to the exercise of the extraordinary power under Art.226 or the inherent powers under sec.482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation

by police officers under sec.156(1) of the Code except under an order of a Magistrate within the purview of sec.155(2) of the Code.

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

(4) Where, the allegations in the FIR 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 sec.156(2) of the Code.

(5) Where the allegations made in the FIR 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 bar engrafted in any of the provisions of the Code or the concerned Act (under which a

criminal proceeding is instituted) to the institution and continuance of the proceedings 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 mala fide 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.”

6.6.4 Further, it would also be fruitful to refer to the decision of the Hon’ble Apex Court in the case of *Mahmood Ali versus State of U.P.* reported in 2023 SCC OnLine SC 950, more particularly paragraphs : 13 & 14 thereof, which are as under :

“13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of

the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be,

with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

14. In State of Andhra Pradesh v. Golconda Linga Swamy, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the

accusation in the FIR can be considered for quashing an FIR. The Court held :-

"5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the

complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is

no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of

oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death....."

(Emphasis supplied)"

6.7 It is noted that while issuing rule by the Coordinate Bench of this Court vide order dated 27.07.2021, this Court has observed in paragraphs : 10 and 11 as under:

"10. In the meantime, no arrest of the applicant – Mr. Naman Gyanchand Pipara be made in connection to the FIRs being FIR No.02 of 2021, 01 of 2021 and 03 of 2021 registered with A.C.B. Police Station, Bharuch

or any past FIR or contemplated to be filed in future in relation to the GSLDC scam.

11. No chargesheet be filed without prior permission of this Court. The Anti-Corruption Bureau may continue with the investigation. The applicant to co-operate with the investigating agency.”

6.8 In view of above facts and circumstances of the case as well as the ratio laid down by the Hon’ble Apex Court as noted above, this Court is inclined to exercise the powers under Section 482 of the Code of Criminal Procedure, 1973 in favour of the applicant, at this stage. All these applications there needs to be allowed.

7. For the reasons recorded above, the following order is passed :

7.1 All these applications are allowed.

7.2 The impugned FIRs being C.R. No.02 of 2021, No.03 of 2021 and No.01 of 2021, respectively, registered with the ACB Police Station, Bharuch are hereby quashed and set aside, **qua the applicant only.**

7.3 Consequently, the proceedings arising out of the impugned FIRs, if any, are also hereby quashed and set aside, **qua the applicant only.**

7.4 Rule is made absolute in all these applications accordingly.

Direct service is permitted.

M.H. DAVE

Sd/-
(SANDEEP N. BHATT,J)