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2026:GUJHC:55186

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 7151 of 2016

With
R/CRIMINAL MISC.APPLICATION NO. 19122 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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MOHANBHAI RAJABHAI MAKWANA & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1,2,3,4
MR TUSHAR L SHETH(3920) 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 : 31/08/2026

JUDGMENT

1. At the outset, learned advocate Mr. Ashish M. Dagli for the applicants places on record a photocopy of the order passed below Exhibit 1 in Sessions Case No. 17 of 2015, wherein it is recorded that applicant No.1 in Criminal Misc. Application No. 7151 of 2016, namely, Mohanbhai Rajabhai Makwana, and applicant No.4 in Criminal Misc. Application No. 19122 of 2015, namely, Harjibhai Dosabhai Makwana, have expired and, consequently, the Sessions Case stands abated qua them. In view of the aforesaid, the present applications also stand abated qua the said applicants. The said order is taken on record.

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2. The applicants before this Court have invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, seeking to quash and setting aside the FIR being C.R. No. I-72 of 2015 registered with Gondal City Police Station for the offences punishable under Sections 306 and 114 of the Indian Penal Code.

3. The facts as narrated in the FIR in nutshell are that:

3.1 The complainant Mansukh resides with his father Devjibhai Naranbhai and his family. It is stated that the complainant has one brother and one sister who got married and resides at village Umwada. It is stated that as his father Devji Naranbhai resides with him and younger brother Ramnikbhai resides separately with his family.

3.2 It is stated that before 15 years of Panchayat a plot was given in village Shivrajgadh where Kachha construction was made and the complainant resides with his family. It is alleged that before 8 years an idle land near to the house of the complainant one Mohanbhai Rajabhai Makwana has tried to make construction and because of the same easementary rights of the complainant affected. It was also stated that as that as the plot was not allotted to them and without any proof the construction is made and therefore dispute made amongst them. It is stated that they frequently used to administer threat and used pressure tactics. It is also alleged that cases were also filed in the court and subsequently since construction is made by Mohanbhai Rajabhai by Taluka Panchayat office the plot was

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cancelled and false complaints were filed.

3.3 It is stated that on 23.05.2015, Mohanbhai Rajabhai, his brother Khodabhai Rajabhai, Manjibhai Kamabhai, Khetabhai as well Harjibhai Dosabhai Makwana and the wife of Mohanbhai namely Shantuben, Bhabi of Mohanbhai namely Rudiben and Manjuben all of them initiated proceedings before Gondal Taluka. Police Station against the complainant and against his wife and family members. It is stated that in pursuant to the complaint all were called before Gondal Taluka Police Station and chapter cases was filed against them. It is stated that as because of such harassment the father of the complainant – Devjibhai Naranbhai Makwana who committed suicide at the time when the complainant and the family members are at the police station. It is stated that after they were granted bail in a chapter case, they went to the hospital and found that their father passed away and accordingly, the complainant came to the police station and filed the FIR. It is alleged that since last 8 years the dispute was made with regard to the plot and because of this harassment he committed suicide.

4. Learned advocate Mr. Ashish Dagli for the applicants, at the outset, would submit that in the Sessions Case, charges have been framed and four witnesses have been examined despite the stay granted by this Court. It is submitted that the same has happened under a misconception of law, as interpreted in the case of ***Asian Resurfacing of Road Agency Pvt. Ltd. and Another v. Central Bureau of Investigation,*** reported in ***(2024) 6 SCC 307***. However, when the said fact was brought to

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the notice of the learned Trial Court, further proceedings in the trial were not conducted. It is submitted that, as reflected on the online website, at one point of time, the matter was shown as being posted for final arguments; however, upon the same being brought to the notice of the learned Trial Court, the Court did not proceed further. Thus, four witnesses came to be examined during the intervening period.

5. Be that as it may, learned advocate would further submit that no case is made out under Section 306 of the IPC, as the entire FIR conspicuously lacks any averments as to the nature of the alleged harassment meted out to the deceased, which could have left him with no other option but to commit suicide. It is submitted that civil litigation was already pending with regard to the plot in question, wherein construction was raised by the family of the present applicants. It is further submitted that the deceased, who was the father of the complainant, committed suicide at the Zila Panchayat office, where the members of the complainant's family had been called to the Police Station in connection with the chapter case lodged by the family of the present applicants. However, the deceased father of the complainant was not named in the said chapter case. Under such circumstances, it is argued that merely lodging a chapter case cannot be termed as harassment, and therefore, learned advocate would submit that the present applications may be allowed.

6. Learned advocate Mr. Ashish Dagli would further submit that the mere averment that all the applicants herein were

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harassing the deceased cannot be believed, inasmuch as, except for such a bare statement, even during the course of investigation, there is not an iota of evidence to rope in the present applicants or to bring home their complicity in the alleged crime. It is submitted that the complainant had already instituted Regular Civil Suit No. 687 of 2006, wherein the application below Exhibit 5 came to be rejected, and the appeal preferred against the rejection of Exhibit 5 was also dismissed, and ultimately, the said civil suit also came to be rejected.

6.1 However, merely because the family of the applicants could not raise the construction as stipulated in the allotment of the land in favour of the present applicants, namely, applicant Mohanbhai and his wife Shantaben, and the permission came to be cancelled, the same was challenged before the District Development Officer by way of an appeal under Section 242 of the Panchayat Act. Thus, it cannot be said that pursuing the civil or criminal remedies available under law would amount to unnecessary harassment.

6.2 It is further submitted that several applications were also preferred by the family of the present complainant with regard to cancellation of the plot allotted to the present applicants, as well as the aforesaid civil suit, which ultimately came to be rejected. Under such circumstances, it cannot be said that the ingredients of Sections 306 and 114 of the IPC are attracted.

7. *Per contra*, learned advocate Mr. Tushar Sheth would

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submit that for the last eight years, the deceased had been continuously subjected to harassment by the family members of the applicants with regard to the property in question, and having no other alternative, the deceased committed suicide at the Panchayat office. It is submitted that despite making several representations with regard to the alleged illegality committed by the applicants and their having raised illegal construction without obtaining any valid permission, the deceased was left with no other alternative but to commit suicide. Under such circumstances, learned advocate would submit that the present applications may be rejected.

8. Learned APP Mr. Rohan Shah for the State would submit that since the charge-sheet has already been filed, charges have been framed and four witnesses have been examined, this Court ought not to entertain the present applications and the applicants may be relegated to the learned Trial Court to face the trial. Learned APP, therefore, would submit that the present applications may be rejected.

9. Heard learned advocates for the respective parties.

10. The factum of filing of Criminal Misc. Application No. 1 of 2021 in Criminal Misc. Application No. 7151 of 2016 was for extension of the interim relief, on the ground that the learned Trial Court was insisting upon proceeding with the trial, relying upon the judgment of the Hon'ble Supreme Court in the case of ***Asian Resurfacing of Road Agency Private Limited*** **(supra)**,

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wherein the interim relief, if any, granted earlier was directed to continue till the next date. The said order was passed on 15.11.2022.

11. The earlier orders are perused. Vide order dated 31.03.2016, it was specifically observed that a request may be made before the concerned Court not to proceed with the committal proceedings, and if such request is made, the same shall be considered in accordance with law. The said interim arrangement continues to operate till today.

12. The factum of four witnesses having been examined and cross-examined by the defence is not in dispute. Be that as it may, this Court has gone through the averments made in the FIR and has also perused the charge-sheet placed on record along with the memorandum of the petitions. The averments in the FIR, as well as the statements recorded during the course of investigation, would reflect that the allegations levelled against the applicants are vague and general in nature, mainly alleging lodging of false FIRs and harassment by the applicants and their family members.

13. The factum of allotment of the disputed land in question in favour of Mohanbhai and Shantaben, wife of Mohanbhai, vide order dated 19.09.2002 by the Taluka Development Officer is not in dispute. The fact that the said allotment came to be cancelled, against which an appeal under Section 242 of the Panchayat Act was preferred, is also not in dispute. The cancellation of the

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allotment of the land in question appears to be on account of breach of the conditions of allotment, more particularly, failure to raise construction within the specified time. The factum of filing of Regular Civil Suit No. **687 of 2006**, wherein the application below Exhibit 5 came to be rejected and the appeal preferred thereafter against the rejection of the Exhibit 5 application was also dismissed, is not in dispute. The rejection of the said suit is also not in dispute.

14. Lastly, the said suit came to be disposed of on 20.12.2010 vide judgment and order dated 20.12.2010. The appeal preferred on 07.01.2014 under Section 242 of the Panchayat Act is also not in dispute. The factum of registration of the chapter case against the family members, except the deceased, is also not in dispute.

15. It would also be apt to refer to the judgment in the case of ***Abhinav Mohan Delkar v/s. State of Maharashtra and Others*** reported in ***2025 SCC OnLine SC 1725*** wherein it is held that:

> *"22. What comes out essentially from the various decisions herein before cited is that, even if there is allegation of constant harassment, continued over a long period; to bring in the ingredients of Section 306 read with Section 107, still there has to be a proximate prior act to clearly find that the suicide was the direct consequence of such continuous harassment, the last proximate incident having finally driven the subject to the extreme act of taking one's life. Figuratively, the straw that broke the camel's back; that final event, in a*

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> *series, that occasioned a larger, sudden impact resulting in the unpredictable act of suicide. What drove the victim to that extreme act, often depends on individual predilections; but whether it is goaded, definitively and demonstrably, by a particular act of another, is the test to find mens rea. Merely because the victim was continuously harassed and at one point, he or she succumbed to the extreme act of taking his life cannot by itself result in finding a positive instigation constituting abetment. Mens rea cannot be gleaned merely by what goes on in the mind of the victim.*

16. Tested on the aforesaid principles, when the facts of the present case are taken into consideration, there is not an iota of evidence to point out that soon before the death, there was any instigation, active participation or any overt act attributable to the present applicants. Even if the applications preferred by the family of the present applicants and the complainant's family are taken into consideration, the same cannot be termed as harsh or severe harassment, unless there is a conscious and deliberate intention, coupled with mens rea, to drive the other person to commit suicide.

17. When the applicants are pursuing the remedies available under law and had also been allotted the land in question by the competent authority, though the said allotment was subsequently cancelled, against which an appeal was also preferred, the same, particularly when the cancellation was on the technical ground of not raising the construction within the time-frame stipulated in the allotment letter, cannot by itself constitute harassment.

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18. Even assuming, for the sake of argument, that construction was raised without any authorization, the same would not amount to harassment, inasmuch as the complainant's family had availed the civil remedy by filing a suit, which ultimately came to be dismissed in the year 2010.

19. Thus, merely alleging that the applicants had pressurized the deceased cannot, at all times, be sufficient to hold them responsible, without there being something more to clearly discern the intention that the deceased would commit suicide. Such an allegation, by itself, would not fall within the four corners of Section 107 of the IPC so as to ultimately attract the penal provisions of Section 306 of the IPC.

20. The alleged incident had occurred at the Panchayat Office, where the complainant and other family members had been called by the concerned Police Station in connection with the chapter case lodged by the family members of the applicants. Under no stretch of imagination can the act of the applicants, in such circumstances, be said to amount to instigation to commit suicide.

21. Even otherwise, as held by the Hon'ble Supreme Court in the case of **Shenbagavalli and Others v. The Inspector of Police, Kancheepuram District and Another**, reported in ***2025 Supreme (SC) 753,*** mens rea cannot be presumed merely because an act of the applicants may have been highly insulting to the deceased, even where abusive language was used, so as to

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conclude that such conduct constituted an instigation to commit suicide. In the present case, there is not even any allegation of abusive language having been used.

22. Even if the act of the applicants in pursuing the legal remedies available to them is taken into consideration, the same cannot be termed as a highly pressurizing tactic or as an act of pressurizing the deceased by the applicants and, therefore, would not fall within the four corners of Section 107 of the IPC.

23. There is no evidence of any positive act on the part of the applicants having any proximity to the time of occurrence, which could have compelled the deceased to commit suicide. Thus, merely on the allegations of lodging a false FIR and harassment, in the absence of any positive action proximate to the time of occurrence which compelled the deceased to commit suicide, the ingredients of Section 107 of the IPC cannot be said to be attracted so as to constitute an offence punishable under Section 306 of the IPC.

24. In the result, the present applications are allowed. The FIR being C.R. No. I-72 of 2015 registered with Gondal City Police Station, and all consequential proceedings arising therefrom, including Sessions Case No. 17 of 2015 pending before the learned Sessions Court at Gondal, are hereby quashed and set aside. Rule is made absolute.

(P. M. RAVAL, J)

MOHD SAIF ULLAH

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