

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY SUBORDINATE COURT) NO. 1167 of 2023

**FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

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|------------------------|-----|----|
| Approved for Reporting | Yes | No |
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SHAILESHBHAI VITTHALBHAI PATEL

Versus

STATE OF GUJARAT & ORS.

Appearance:

MS MEDHA N PANDYA(6171) for the Applicant(s) No. 1

MR ADITYA S PATEL(12087) for the Respondent(s) No. 2

MR SURESH B BHATT(5669) for the Respondent(s) No. 3,5,6,7,8,9

NOTICE SERVED BY DS for the Respondent(s) No. 4

MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 06/04/2026

JUDGMENT

[1.0] **RULE.** Learned APP waives service of notice of Rule for and on behalf of respondent No.1, learned advocate Mr. Aditya Patel for and on behalf of respondent No.2 and learned advocate Mr. Suresh Bhatt for respondent Nos.3 to 9. With the consent of learned advocates appearing for the respective parties, present application is taken up for final hearing.

[2.0] By way of present revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the applicant has prayed for quashing and setting aside of the order dated 08.03.2023 passed below Exh.1 in P.H. No.1/2023 by the

learned Principal District & Sessions Judge, Kheda at Nadiad upon the complaint made by the applicant, whereby the learned Sessions Judge has been pleased to dismiss the complaint filed against respondent Nos.2 to 9.

[3.0] It appears that the present applicant filed a private complaint being P.H. No.1/2023 against respondent Nos.2 to 9 herein for the offence under Sections 164, 165 and 120(A) of the Indian Penal Code, 1860 (for short "IPC") and sections 7, 7(A), 8, 9, 11 and 12 of the Prevention of Corruption Act, 1988 (for short "PC Act") which came to be dismissed by the learned Sessions Judge at the stage of preliminary hearing. Hence, present revision application is filed.

[4.0] Learned advocate Ms. Medha Pandya appearing for the applicant has submitted that the learned Sessions Judge has committed an error in dismissing the complaint though *prima facie* offence is made out. In the complaint it was alleged that accused persons have indulged in criminal activity and in collusion of each other they have cheated the government and siphoned off an amount of Rs.50 Crore and have indulged in corrupt practice and have failed to provide the documents of said scam though information was sought for under the Right to Information Act and though an appeal under the provisions of RTI Act was preferred, no any information is provided. Being aggrieved and dissatisfied with the order of Commission, the applicant preferred an appeal and though order was passed, till date they have failed to comply with the same. She has further submitted that without sanctioning any proposal from the government under the composite package Nos.79, 81 and 95, over and above the amount of tender, Rs.65 lakh in excess has been paid by preparing forged order and tender and said excess amount of Rs.65

lakh has been paid to the agency of Manharbhai Patel indulging in corrupt practice and thus the respondent Nos.2 to 9 herein have committed an offence. She has further stated that it is alleged that one employee is unable to perform his duty and though he remained absent, he is drawing salary from government and though he was informed about the illegality, irregularity and corrupt practice in collusion of each other, they have committed the offence and in this regard, the complaint is filed which was dismissed and therefore, she has requested to allow the revision application and direct the learned Sessions Judge to restore the complaint and to take cognizance of the offence.

[5.0] Learned APP appearing for respondent No.1 – State of Gujarat and learned advocates Mr. Aditya Patel for respondent No.2 and Mr. Suresh Bhatt for respondent Nos.3 to 9 have opposed the present application mainly on the ground that no sanction has been sought for which is mandatory. Even otherwise, no any alleged offence is made out as allegations of complainant itself are in question as the complainant himself is not having any personal knowledge or interest. It is further submitted that if we peruse the complaint, it is clearly stated that on the basis of one anonymous letter he has received, he has filed the complaint. It is further submitted that the complainant has filed the impugned complaint to keep the government employees under Damocles' Sword on their neck. Hence, they have requested to dismiss the present revision application.

[6.0] Having heard learned advocates appearing for the respective parties and going through the complaint, *prima facie*, it appears that applicant having no personal knowledge about the allegations made in the complaint and based on one anonymous letter received by him, he

has accepted the contents of said letter as gospel truth and filed the complaint.

[6.1] Further, when a query was posed to the learned advocate for the applicant to show or point out as to how the case falls under the provisions of the PC Act, learned advocate for the applicant failed to reply to the said query and insisted to take cognizance for the offence under Sections 164 and 165 of the IPC. It is needless to say that provisions of Sections 161 to 165A of the IPC are repealed and PC Act is enacted subsequent to that. Hence, question does not arise to file any complaint under Sections 164 or 165 of the IPC. So far as sections 7, 7(A), 8, 9 and 11 of the PC Act are concerned, no any allegations are levelled *qua* demand of illegal gratification or no bribe has been asked for. No any case or allegation which reveals that the respondents have attempted or obtained from any person any undue advantage and they have performed their public duty improperly or dishonestly. Even, no any allegation of abetment is there. Merely based on apprehension, no any offence could have been registered or investigated. Further, respondents are public servants and no any iota of evidence as regards allegation of criminal misconduct by the public servants. Even if we accept the allegations as it is then also same amounts to irregularity or misappropriation of government funds. Even if for the sake of argument such contention is accepted without admitting, separate government mechanism and separate institutional mechanism is set up by the government and if alleged offence or any such irregularity in the tender process or any excess amount payment is there, even though under the audit and other government procedures are there to trace out such irregularity, which the complainant has brought to the notice of government. Hence, now it is for the government to take call if alleged or so-called irregularity or

offence is committed by the respondents.

[6.2] Lastly, so far as allegation of PC Act is concerned, after enactment of PC Act, section 17(A) is introduced and as per Section 17A, for conducting any inquiry or investigation of the offence related to PC Act against the public servant in discharge of his official function or duty, permission is required. Hence, considering bar under Section 17A of the PC and relying on the decision of the Hon'ble Supreme Court in the case of **Anil Kumar & Ors. v. M.K. Aiyappa & Anr. [(2013) 10 SCC 705]**, learned Sessions Judge has not committed any error in dismissing the complaint.

[6.3] Further, the revisional jurisdiction can be exercised where there is a palpable error or non-compliance with the provision of law and where decision is completely erroneous and where the judicial discretion is exercised arbitrarily. Herein, if we examine the reasons assigned by the learned Sessions Judge, it appears that learned Judge has already appreciated the facts and finding of fact not to be upset unless it is found perverse and finding of fact not to be substituted keeping in mind the ratio of Hon'ble Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander & Anr.** reported in **(2012)9 SCC 460** as no perversity is found in the reasons assigned by the learned Sessions Judge and proper reasons and finding based on evidence led has been given and hence also, no interference at the hands of this Court in exercise of revisional jurisdiction is required.

[6.4] It would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Malkeet Singh Gill vs. State of Chhatisgarh** reported in **(2022)8 SCC 204** wherein the Hon'ble Supreme Court held that section 397/401 CrPC vests jurisdiction for

the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction of law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings. It is a settled legal proposition that if the Courts below have recorded the finding of fact, the question of re-appreciation of evidence by the Court does not arise unless it is found to be totally perverse.

[7.0] In wake of aforesaid conspectus, present revision application fails and stands **dismissed**. Rule is hereby discharged.

Sd/-
(**HASMUKH D. SUTHAR, J.**)

Ajay