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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 3157 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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KAILSHBHAI REVAJI PANCHAL(LUHAR) & ANR.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR P P MAJMUDAR(5284) for the Applicant(s) No. 1,2
MR RB THAKOR(6743) for the Respondent(s) No. 2
KANVA ANTANI APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 01/09/2026

ORAL JUDGMENT

1. applicants before this Court are original Accused Nos. 1 and 2, invoking extraordinary jurisdiction under Section 226 read with Section 482 of the Code of Criminal Procedure, 1973, interalia praying to quash and set aside FIR being CR No. II-43 of 2017, lodged before the Amirgadh Police Station, District Banaskantha, for the offences punishable under Section 186, 189, 504, 506(2) and 114 of the Indian Penal Code, 1860.

2. Facts as narrated in the FIR in nutshell are to the effect that:-

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2.1 That the Respondent no. 2 has filed the Impugned FIR on 25.04.2017 for the alleged offences committed on 28.03.2017 alleging, inter alia, that Respondent No. 2 is the Taluka District Officer of Taluka Panchayat, Amirgadh, and allegedly 28.03.2017 at around 3.00 Pm when Respondent No. 2 and his Senior Clerk, Rohit Prajapati and others were present on their duty at Taluka Panchayat office, allegedly, the applicants came there and give a computerized application, wherein, it was stated that if their houses are demolished by the Village Panchayat then they will have to commit suicide.

2.2 It is further alleged that when the applicants were asked to contact the Village Panchayat, Amirgadh office, allegedly the applicants got excited and gave threat to set on fire all staff members of the office. Thus, it is alleged that the applicants tried to create obstacle in performance of public duty by public servant. Hence the present petition.

3. Learned advocate Mr. P.P Majmudar for the applicants would submit that:-

3.1 None of the ingredients of either Section 504 or Section 506(2) of the IPC is made out, and inasmuch as the alleged incident occurred on 28.03.2017, whereas the FIR was lodged on 25.04.2017, i.e., almost 27 days after the alleged incident, it cannot be said that the threat, if any, given by the present applicants was with an intent to cause alarm to the informant. Thus, the same would not attract the provisions of Section 506(2) of the IPC.

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3.2 That the mere fact of the informant having been abused is not sufficient by itself to attract the provisions of Section 504 of the IPC, as there is no likelihood that such provocation would cause a breach of peace or induce the informant to commit any other offence. Under such circumstances, Section 504 of the IPC is also not attracted.

3.3 Insofar as the allegation under Section 186 of the IPC is concerned, the same is squarely covered by the bar contained in Section 195 of the CrPC. Even if the investigation is permitted to continue and culminates in the filing of a charge-sheet, the competent Court will not be able to take cognizance unless there is a complaint in writing as contemplated under Section 2(d) of the CrPC. Cognizance cannot be taken on the basis of the final report (charge-sheet) submitted by the investigating agency. He has, therefore, argued that the present petition be allowed.

3.4 Lastly, it is submitted that, though Section 189 of the IPC is not covered under the provisions of Section 195 of the CrPC, the act of threatening to cause injury to a public servant is inseparable from the act of obstructing the public servant from discharging his duties, as alleged in the FIR. Therefore, the FIR, to that extent, is also required to be quashed and set aside and thus argued to allow the present petition.

4. Per contra, the learned Additional Public Prosecutor, along with learned Advocate Mr. R. B. Thakor appearing for the original complainant, jointly submits that merely because threats had also been given earlier and no complaint was lodged, it cannot be said that the threats allegedly administered by the present

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applicants would not fall within the four corners of Section 504 or Section 506(2) of the IPC. It is further submitted that, even if the offence under Section 186 of the IPC is barred under Section 195 of the CrPC, the investigation can still proceed qua Section 189 of the IPC and thus argued to reject the present petition.

5. Heard learned advocate for the respective parties. This court has gone through the FIR.

5.1 At the outset, law governing the exception under Section 195 is required to be taken into consideration. The Hon'ble Supreme Court in the case of ***Devendra KumarVersus State (NCT of Delhi) and Another reported in 2025 SCC Online SC 1753*** more particularly paragraph 59, has held as follows:

"E. CONCLUSION
59. We may summarize our final conclusion as under:
(i) Section 195(1)(a)(i) of the Cr.P.C. bars the court from taking cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.C., unless there is a written complaint by the public servant concerned or his administrative superior, for voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of offences enumerated therein.

(ii) If in truth and substance, an offence falls in the category of Section 195(1)(a)(i), it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences disclosed in the same set of facts. However, it also cannot be laid down as a straitjacket formula that the Court, under all circumstances, cannot undertake the exercise of splitting up. It would depend upon the facts of each case, the nature of allegations and the materials on record.

(iii) Severance of distinct offences is not permissible when it

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would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the Cr.P.C., which requires a complaint by a public servant for certain offences against public justice. This means that if the core of the offence falls under the purview of Section 195(1)(a)(i), it cannot be prosecuted by simply filing a general complaint for a different, but related, offence. The focus should be on whether the facts, in substance, constitute an offence requiring a public servant's complaint.

(iv) In the aforesaid context, the courts must apply twin tests. First, the courts must ascertain having regard to the nature of the allegations made in the complaint/FIR and other materials on record whether the other distinct offences not covered by Section 195(1)(a)(i) have been invoked only with a view to evade the mandatory bar of Section 195 of the I.P.C. and secondly, whether the facts primarily and essentially disclose an offence for which a complaint of the court or a public servant is required.

(v) Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr.P.C. This would all depend on the facts of each case.

(vi) Sections 195(1)(b)(i)(ii) & (iii) and 340 of the Cr.P.C. respectively do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation, provided the procedure laid down in Section 340 of the Cr.P.C. is followed."

5.2 Thus, unless there is a written complaint by the public servant concerned or by his administrative superior in respect of the offence of voluntarily obstructing the public servant from the discharge of his public functions, the Court would lack the

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competence to take cognizance. Under such circumstances, permitting the investigation to continue pursuant to the impugned FIR would be an exercise in futility, inasmuch as the bar contained in Section 195(1)(a) of the CrPC would bar the Court from taking cognizance on the basis of the final report submitted under Section 173 of the CrPC.

5.3 As far as rest of the sections, more particular Section 504 and 506(2) and 189 of the IPC are concerned, in truth and substance, the offences fall within the purview of Section 195(1)(a)(i) of CRPC. The exercise of splitting up the offences would also be an exercise in futility, inasmuch as the said offences also fall within the category of offences contemplated under Section 195(1)(a)(i), as held by the Supreme Court in ***State v. Kathi Unad, reported in AIR 1955 Saurashtra 10,*** *that t*he very act of obstructing, assaulting and hurting to the informant and that the offence primarily seems to be committed under Section 186 of the IPC and to convict the accused for offence under Section 332 of the IPC would tantamount to holding the accused guilty under Section 186 of the IPC and then convicting them for offence under Section 332 of the IPC. Under such circumstances, it was held that the prosecution could not circumvent the provisions of Section 195 by a dubious method.

5.4 Under the circumstances, the present case squarely falls under Clauses (i) and (ii) of paragraph 59 of the aforesaid judgment of Devendrakumar.

6. In view of the above, the captioned petition stands allowed. The impugned FIR being CR No. II-43 of 2017, lodged before the

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Amirgadh Police Station, District Banaskantha, for the offences punishable under Section 186, 189, 504, 506(2) and 114 of the Indian Penal Code, 1860, along with all consequential proceedings arising therefrom qua the present applicants, stands quashed and set aside. However, it is always open to the State to initiate fresh proceedings in accordance with the procedure prescribed by law.

7. Rule is made absolute to the aforesaid extent.

(P. M. RAVAL, J)

MMP

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