

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CRIMINAL APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 955 of 2010**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE MOHINDER PAL

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

=====

STATE OF GUJARAT....Applicant(s)

Versus

POPATBHAI NATHABHAI PATEL....Respondent(s)

=====

Appearance:

MR NJ SHAH APP for the Applicant(s) No. 1

MR PRAFULL K PATHAK, ADVOCATE for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 30/10/2015

ORAL JUDGMENT

1. Present is a petition under Article 226 of the Constitution read with Section 482 of Code of Criminal Procedure (Code for short) against the order dated 16th February, 2010 passed by the learned Additional City Sessions Judge, City Civil Court No.8, Ahmedabad vide which respondent No.1 has been discharged from the charges levelled against him by Metropolitan Magistrate, Court No.5 in Criminal Case No.1882 of 2009.

2. Brief facts of this case are that a complaint was filed, inter-alia, stating therein that on account of poor and low quality material used by the main builder in collusion with the co-accused persons, the building known as 15th August Avenue on account of devastating earthquake which took place on 26.01.2001 in the morning in the State of Gujarat including the city of Ahmedabad, collapsed and forty two persons died and seventeen persons sustained injuries. In view of the aforesaid facts, the complaint was filed that the main accused along with present respondent No.1 and other persons have acted against bye-laws and rules of the Ahmedabad Municipal Corporation and made the construction of poor quality material and therefore, people have suffered loss of life.

3. After investigation, the Challan was presented in the Court and charge was framed against the accused person/s including the respondent No.1. During the pendency of the proceedings, application dated 16.11.2009 was moved by respondent No.1 seeking discharge from the proceeding. This application came to be rejected by the Metropolitan Magistrate, Court No.5 by an order dated 2.12.2009. Against this order, Criminal Revision Application No.34 of

2010 was preferred before the City & Sessions Judge, Ahmedabad on 21.1.2010. This revision came to be allowed by impugned order dated 16.2.2010. Because of the discharge of the accused, State has come in appeal which is pending before this Court.

4. I have heard learned counsel for the State and learned counsel for the respondent.

5. At the very outset, learned counsel representing the respondent No.1 has drawn my attention to two judgments passed by this Court i.e. (1) Criminal Revision Application No.705 of 2006 and allied matters dated 20.01.2010 and (2) Criminal Revision Application No.396 of 2006 and allied matters dated 20.01.2010; wherein, appeals preferred by the State against the discharge of the similarly situated other accused have been dismissed. The relevant portion of the order passed in Criminal Revision Application No.396 of 2006 is reproduced as under:

“13. Bye-Law No.III(9) stipulates about safety of buildings. It specifies that every person who undertakes the construction work on a building or directs or supervises such works shall be responsible and shall ensure use of sound and good quality building materials properly put together for optimum safety. He shall be liable for all consequences arising out of breach of this bye-law. It also specifies that every person who undertakes construction of a building and/or who supervises the said construction and/or who designs the structural member of the building shall comply with the provisions of the National Building Code prevailing at the relevant time or the provisions of the Indian Standard Specifications published from time to time.

14. It appears from the bye-laws reproduced above that the respondents-accused as Structural

Engineers are not directly responsible for any construction activities of the buildings. They are also not concerned with sanctioning of the plan, design or to see whether inferior quality of material is used in the construction of the building or not. It is not the case of the prosecution that the respondents were having any financial association with the builders of collapsed buildings. It is also not the case that the buildings were collapsed due to building plans being improper or improper structural design or improper construction of the structure of the buildings. It is also not the duty of the structural engineers to see that their designs are carried out in the construction as it is the duty of the site supervisors or clerk of works. It also appears that as and when an application for occupation permission is made accompanied by a declaration of the owner that the work on the building is completed as per the approved plan and as per bye-law of the Corporation under the supervision of the Supervisor, the Supervisor shall issue a certificate to the effect that the construction was carried out under his supervision as per the designed plan and is complete in all respects. He shall also certify that the materials used in construction are according to the specified standards and the buildings are safe for occupation. It is the duty of Clerk of works to see that standard of specification and workmanship as prescribed in the National Building Code are maintained during the stages of erection. Thus, it is clear that it is the Supervisor or Clerk of Works who would be mainly responsible for any negligence in the construction activities of the buildings and the respondents-accused being Structural Engineers cannot be held liable for any negligence in regard to the same. Thus, they cannot be fastened with the liability of collapse of the building being Structural Engineers and hence, case of the present respondents are entirely different from that of the Supervisors or Clerk of works.

15. From the entire papers of charge sheet and the documents annexed thereto, there is nothing to implicate that the respondents are liable or responsible for any of the offences levelled against them. No grave suspicion is made out against the respondents for framing of charge either. In view of

the above, taking into consideration nature of their duties, this Court is of the prima facie opinion that there is no sufficient grounds to proceed with the trial against the respondents-accused and hence, they were rightly discharged by the learned Addl. City Sessions Judge. Since no irregularity or illegality as having committed in arriving at the said findings has been noticed by this Court, these revisions are required to be dismissed.

16. All these revisions are dismissed. Rule is discharged in each revision.

17. Office shall place a copy of this judgment in each revision”.

6. Learned APP could not dispute the findings recorded by the Court in the aforementioned judgments. He has no further knowledge whether this matter is taken to the Apex Court or any adverse finding has been recorded against the respondent of those cases.

7. The case of the present respondent No.1 cannot be distinguished from the case of aforementioned persons who have been finally discharged by the Court.

8. Resultantly, present Special Criminal Application being devoid of merits is dismissed. Rule discharged.

(MOHINDER PAL, J.)

ashish