

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 7306 of 2022**

=====

DHAVALKUMAR HARIKRUSHNABHAI BAROT

Versus
STATE OF GUJARAT

=====

Appearance:

MS DIPMALA S DESAI(6596) for the Applicant(s) No. 1,2,3,4

NOTICE SERVED for the Respondent(s) No. 2

MS CM SHAH, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 31/01/2024

ORAL ORDER

1. **Rule.** Learned APP waives service of rule for the respondent-State.

2. By way of this application, the applicants-original accused seek to quash the proceedings of Criminal Case No.22788 of 2020, for the offences punishable under Sections 186, 506(1) and 114 of the Indian Penal Code. The applicants have also challenged the order of discharge dated 26.09.2023 passed by the trial Court by which the Court concerned refused to consider Section 195 of the Criminal Procedure Code, 1973 and accordingly the prayer of discharge has been rejected by the Metropolitan Magistrate Court at Ahmedabad.

3. This Court has heard Ms. Dipmala Desai, learned counsel for the applicants and Ms. C.M. Shah, learned Additional Public Prosecutor for the respondent-State.

4. The facts and circumstances leading to file the present application are that, the FIR by the police officials filed for the offence punishable under Section 186 and 506(1) of the Indian Penal Code against the applicants, *inter alia*, alleging that they have voluntarily obstruct the police officials in discharging their public functions and intimidated them for dire consequences. Pursuant to the said FIR dated 29.04.2020, the chargesheet came to be filed for the aforesaid offences. In view of bar of Section 195 which provides that, no Court shall take cognizance of the offence under Section 186 of the Indian Penal Code unless the complaint in writing by a public servant is given. The applicants had submitted discharge application, *inter alia*, stating that, the complaint in writing has not been given by the police officials and thus, Court cannot take cognizance of the offence. The learned trial Court rejected the discharge application observing that, both the offences are distinct and separate and therefore, the bar of Section 195 would not be applicable so far offence of criminal intimidation is concerned.

5. In the aforesaid facts, learned counsel Ms. Desai has submitted that, in the offence punishable under Section 186 of the Indian Penal Code, the complaint in writing by a

public servant is must. In the facts of the present case, the FIR is filed by the police officials. In such circumstances, there is a bar created under Section 195 of the Cr.P.C. to take cognizance of the offence and therefore, against the statutory provision, by taking cognizance, the trial Court has proceeded under the premise that the offence punishable under Section 506(1) is inseparable and therefore, the bar is not applicable.

6. In view of the aforesaid contention and relying on the case of *Satish Mehra vs. State (NCT, Delhi)* reported in (2012) 13 SCC 614, she contended that, the power to quash proceedings at any stage is inherent in a High Court on the broad principle that in case the allegations made in the FIR or criminal complaint as may be, *prima facie*, do not disclose a triable offence, there can be reason as to why accused should be made to suffer the agony of legal proceedings and this is the core basis on which the power to interfere with the pending criminal proceedings has been recognized to be inherent in every High Court. In such circumstances, she would urge that, case is made out to exercise inherent powers to quash the criminal proceedings.

7. On the other hand, opposing the prayer, learned State counsel has submitted that, the trial Court has rightly observed that, the offence committed during the course of same transaction cannot be split up and

therefore prosecution of Section 506(1) is falling the outside the purview of Section 195 can be tried by the Court without a complaint as provided under Section 195 of the Cr.P.C. In such circumstances, she would urge that no case is made out to interfere with the criminal proceedings which has already been commenced after framing of charge.

8. Having regard to the facts and circumstances of the present case, the issue falls for my consideration is whether the case is made out to quash the criminal proceedings in exercise of inherent powers of this Court under Section 482 of Cr.P.C.?

9. The applicants have approached this Court to quash the criminal proceedings in view of the fact that since alleged offence is one of the offences for which there is a bar under Section 195 of the Cr.P.C. and learned Magistrate could not have taken cognizance of the alleged offence since the complaint is not filed by the public servant. It is no doubt true that the allegations made against the accused are that they had voluntarily obstructed the public servants who were on duty. Thus, the primary offence alleged to have been committed by the accused is an offence under Section 186 of the Indian Penal Code. Thus, therefore, the offence of intimidation alleged to have been committed cannot be said to be a distinct and separate offence as it has been committed

pursuant to the act of obstructing the public servant and thus, both the offences seems to be inseparable. In such circumstances, the Apex Court time and again in its various judgments held that, the offence committed during the course of same transaction cannot be split up to avoid Section 195 of the Cr.P.C.

10. In view of the aforementioned reasons and considering the peculiar facts and circumstances of the present case, the case is made out for exercising the inherent powers of this Court to quash the proceeding of Criminal Case No.22788 of 2020.

11. Resultantly, this application is allowed. The proceedings of Criminal Case No.22788 of 2020 pending before the Metropolitan Magistrate Court, Ahmedabad is hereby quashed. Accordingly, rule is made absolute. However, it is clarified that it shall be open to the prosecution to file fresh proceedings against the applicants by following the procedure prescribed by law. Direct service is permitted.

(ILESH J. VORA,J)

TAUSIF SAIYED