



Reserved On : 13/02/2025
Pronounced On : 17/02/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 16612 of
2024**

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MAHESHDAN PRABHUDAN LANGA
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR KAPIL SIBAL, SENIOR ADVOCATE WITH MR AJ YAGNIK(1372)
for the Applicant(s) No. 1

VEDANT J RAJGURU(9375) for the Applicant(s) No. 1

MR SIMRANJITSINGH H VIRK(11607) for the Respondent(s) No.
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NOTICE SERVED BY DS for the Respondent(s) No. 2

MR MITESH AMIN, ADDITIONAL ADVOCATE GENERAL WITH MR MANAN
MEHTA, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

CAV ORDER

1. With the consent of learned advocates appearing for the parties, the matter is taken up for final hearing.

2. By way of preferring present petition, the petitioner seeks to invoke extra ordinary and inherent jurisdiction of this Court under Article 226 of the Constitution of India read with Section 530 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for quashing of the FIR being C.R.No.11216008240674 of 2024 registered with Gandhinagar Sector 7 Police



Station on 22.10.2024 against the petitioner for the offence punishable under Sections 316(5), 302(2), 306 and 61(2) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 7(a), 8, 12, 13(1)(a) and 13(2) of the Prevention of Corruption Act.

3. The case of the prosecution can be summarized as under:

3.1. It is the case of the prosecution that the complainant is serving as General Manager (Projects) in Gujarat Maritime Board (GMB) since 16.01.2012. It is alleged that the office of the GMB received a confidential letter dated 08.10.2024 from the office of the Deputy Police Commissioner, Crime Branch, Ahmedabad City, wherein very sensitive documents (215 letters) of GMB were attached. Those documents are highly sensitive in nature and therefore on receipt of the aforesaid letter, an internal inquiry of GMB came to be initiated. As stated in the aforesaid letter, highly sensitive documents were seized from the accused viz. Mahesh Prabhudan Langa against whom FIR being C.R.No.11191011240257 of 2024 came to be registered with D.C.B. Police Station, Ahmedabad City on 07.10.2024. It is alleged that from the inquiry it is also found out that the aforesaid sensitive documents were given to the accused by the employee of the GMB. Hence, the FIR in question came to be registered against the petitioner and one unknown person.



4. Heard learned Senior Advocate Mr. Kapil Sibal assisted by learned advocate Mr. A. J. Yagnik for the petitioner, learned Additional Advocate General Mr. Mitesh Amin assisted by learned APP Mr. Manan Mehta for respondent- State.

5. Learned Senior Advocate Mr. Kapil Sibal submits that it is the case of the prosecution that one FIR being C.R.No.11191011240257 of 2024 came to be registered with D.C.B. Police Station, Ahmedabad City, wherein, initially the name of the petitioner accused was not mentioned. Thereafter, during the course of investigation, the investigating officer concerned called the petitioner and therefore petitioner had gone to the police station along with his wife and at that relevant point of time he was arraigned and arrested by the officer concerned. The said FIR is filed against various firms/companies for the alleged creation of bills without supply to avail Input Tax Credit and fake GST registration. He further submits that the partner of one such firm, D.A. Enterprise was the cousin of the petitioner, who was named in the FIR and the wife of the petitioner too was a partner of the said firm. During the course of investigation, the investigating officer concerned has recorded the statement of the co-accused i.e. the brother of the present petitioner wherein he stated that the D.A. Enterprise operates as per the direction of the petitioner and therefore petitioner is also arrested. Thereafter, during the course of



further investigation, the IO concerned has carried out search and seizure at the premises of the petitioner and in the said process, the IO concerned jumped to the conclusion that the documents recovered from the house of the petitioner are confidential and highly sensitive in nature and therefore he forwarded those papers by way of writing a letter to the GMB. On receipt of such letter, the concerned authority of GMB carried out internal inquiry and based upon those documents, jumped to the conclusion that those documents are very sensitive and those documents have been stolen from the office of GMB with the help of the employee of the GMB. Therefore, the impugned FIR is registered.

6. Learned Senior Advocate Mr. Sibal further submits that pursuant to the registration of the FIR, investigation has been commenced. As soon as petitioner came to know about the said fact, he immediately rushed to this Court by way of filing present petition.

7. Learned Senior Advocate Mr. Sibal further submits that if the Court would make cursory glance upon the allegations and accusations levelled against the petitioner in the impugned FIR, in that event, it would be found out that solely on the basis of assumption and presumption, the petitioner has been arraigned in the impugned FIR. The petitioner is not directly or indirectly connected with the commission



of crime in question. He further submits that till date except the petitioner no responsible officer of GMB has been arrested by the investigating officer concerned. Hence, it can safely be said that with an oblique reason, petitioner has been arraigned. He further submits that it is an admitted position of fact that present petitioner is not working in the GMB. Therefore, for the sake of argument and without admitting it, if at all the allegations levelled against the petitioner are to be accepted as it is, in that event, it can safely be said that the said handy work had been carried out by some of the officials of higher rank of the GMB as it is claimed by the prosecuting agency that the nature of those documents is highly sensitive and confidential and those documents are not provided to the party concerned even asked for by way of an application under the provisions of Right to Information Act. Learned Senior Advocate Mr. Sibal further submits that if the documents upon which purportedly reliance is being placed by the prosecuting agency are having that much significance and highly sensitive in nature, in that event, the proceedings under the provisions of the Official Secrets Act, 1923 are required to be instituted but admittedly those proceedings have not been instituted by the complainant, which clearly goes on to show that with a sole intent to harass the petitioner, the impugned FIR is filed. Learned Senior Advocate Mr. Sibal further submits that solely on the basis of



conjecture and surmises present petitioner is arraigned in the impugned FIR. Learned Senior Advocate Mr. Sibal further submits that the theft of the documents has been made by so-called another person and not by the petitioner. Moreover, the breach of trust is also committed by another so-called accused person and not by the petitioner. The petitioner is not even the employee of GMB and it is not even the case of the prosecution that petitioner is directly involved in the commission of the crime. The prosecution launched against the petitioner is on assumption and presumption that someone from the office of GMB has supplied those documents to the petitioner but whether the said set of documents have been delivered to the petitioner directly by the employee of the GMB or from any other persons is also not found out from the body of the FIR. He further submits that for the purpose of invoking the provisions of the Prevention of Corruption Act, the basic and prerequisite condition is that accused must be a government employee and clear cut allegations/materials to substantiate the charge of corruption i.e. demand, acceptance and recovery of the amount of bribe are sine qua non. Those basic and essential ingredients are not available in the instant case insofar as the petitioner is concerned. Admittedly, petitioner is not a government employee and for the purpose of invoking the charge of corruption, prosecuting agency has imagined that petitioner herein has paid amount of bribe to the



employee/officer of the GMB to collect the said documents/materials. Therefore, solely on the assumption of the officer concerned, the FIR came to be filed against the petitioner. Learned Senior Advocate Mr. Sibal further submits that considering the principle of law laid down by the Hon'ble Apex Court in the case of ***State of Haryana v. Bhajan Lal***, reported in ***1992 Supp. (1) SCC 335***, the case of the petitioner would squarely fall under the categories mentioned by the Hon'ble Apex Court in the aforesaid decision and therefore the FIR in question may be quashed qua the petitioner.

8. The present application is strongly opposed by learned Additional Advocate General Mr. Mitesh Amin assisted by learned APP Mr. Manan Mehta for the respondent - State. Mr. Amin submits that the petitioner has been apprehended in another FIR and during the course of investigation of that offence, the investigating officer carried out search and during that search, from the premises of the present petitioner, some confidential and highly sensitive documents of GMB were found out. Thus, the investigating officer of that FIR wrote a letter to the GMB official and attached those documents along with his letter, based on which, the concerned GMB official initiated internal inquiry and on conclusion of that inquiry, jumped to the conclusion that those sensitive and confidential documents were stolen from the custody of GMB. The concerned GMB official also



jumped to the conclusion that those documents might have been stolen with the help of GMB employee and therefore FIR in question came to be filed against the petitioner and one unknown person i.e. the employee of the GMB. Learned Additional Advocate General Mr. Amin further submits that the investigation is at a nascent stage and the petitioner is already in custody in other matters. He further submits that the accused No.2 will be apprehended within no time.

9. Learned Additional Advocate General Mr. Mitesh Amin further submits that it is settled proposition of law that FIR is not encyclopedia of events and on the basis of registration of the FIR investigative machinery is put into motion. Admittedly, in the instant case, during the course of investigation of another FIR, highly sensitive documents of GMB were found out from the premises of the petitioner. On receipt of those documents, the investigating officer concerned has written a letter to the GMB and sent those documents along with his letter. Having found those highly sensitive documents, the concerned GMB official initiated internal inquiry and after verifying and appreciating the material available with him, he prepared a report and jumped to the conclusion that *prima facie* highly sensitive documents of the GMB, which were found from the custody of the present petitioner, have been stolen with the help of the GMB employee. Mr. Amin further



submits that those documents were found from the custody of the present petitioner and therefore *prima facie* involvement of the petitioner in the commission of crime is clearly found out.

10. Mr. Amin further submits that if this Court would make cursory glance upon the contents of the FIR in question, in that event, it would be found out that the documents in question have been found out from the possession of the petitioner and therefore *prima facie* involvement of the petitioner in the commission of crime is spelt out. The investigation is at a nascent stage and the petitioner is also involved in other offence also. Mr. Amin has referred to Section 303, sub-section 7 of Section 2 and Section 221 of Bharatiya Nyaya Sanhita. Learned Additional Advocate General Mr. Amin has also put reliance upon the decision of the Hon'bel Apex Court in the case of ***State of U. P. v. O. P. Sharma***, reported in ***(1996) 7 SCC 705*** and submitted that this Court should be loath to interfere at the threshold to thwart the prosecution in exercise of its inherent power and allow the law to take its own course. He, therefore, submits that when the investigation is at nascent stage and when involvement of the petitioner in the commission of crime is *prima facie* found out from the material collected by the investigating officer during the course of investigation, this Court should not exercise its inherent powers in favour of the petitioner at this stage.



11. Having heard the learned counsels appearing for the respective parties and perused the materials available on record, it is found out that during the course of investigation of one FIR, the investigating officer concerned has carried out search at the premises of the present petitioner and during that search, he recovered some documents of GMB. It is the case of the prosecution that those documents are very sensitive and confidential and therefore the investigating officer concerned has written a letter to the concerned GMB official and sent those documents along with his letter. On receipt of those documents, the concerned GMB official initiated internal inquiry and prepared a report. As per the opinion of the officer of the GMB, those documents are very sensitive and they have been stolen from the GMB office with the help of the employee of GMB. Therefore, the FIR in question came to be filed against the petitioner and one unknown person i.e. the employee of the GMB. It is the case of the petitioner that without joining the person, who has committed the so-called theft and criminal breach of trust, as an accused in the FIR in question, the FIR in question is not tenable and maintainable against the petitioner. Whereas, as per the case of the prosecution, when *prima facie* involvement of the petitioner in the commission of crime is found out and the investigation is at a nascent stage, considering the gravity of offence, this Court may not exercise inherent powers in favour of the

petitioner at this stage. Moreover, learned Additional Advocate General has also submitted that the accused No.2 will be apprehended within no time. Be that as it may, the fact remains that highly sensitive and confidential documents of the Gujarat Maritime Board, which are not even provided to any person under the Right to Information Act, have been recovered and seized from the premises of the petitioner and when the official of the GMB jumped to the conclusion to lodge FIR against the petitioner and another accused person and when the investigation of the FIR is at a nascent stage and *prima facie* case is made out against the petitioner, I am not inclined to exercise inherent powers in favour of the petitioner at this stage.

12. Before delving into the issue involved in the matter, I would like to refer and rely upon the decision of the Hon'ble Apex Court in the case of **O. P. Sharma (supra)**, wherein, the Hon'ble Apex Court has observed and held as under:

"12. In [State of Bihar v. Rajendra Agrawalla](#) [Crl. A. No.66 of 1996] decided on January 18, 1996, this Court observed as under:

"It has been held by this Court in several cases that the inherent power of the court under [Section 482](#) of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse



of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face values do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out."

13. In [Mushtaq Ahmad v. Mohd. Habibur Rehman Faizi & Ors.](#) [JT 199 (1) 656] this Court held as under:

"... According to the complaint, the respondents had thereby committed breach of trust of Government money. In support of the above allegations made in the complaint copies of the salary statements of the relevant periods were produced. In spite of the fact that the complaint and the documents annexed thereto clearly made out a, prima facie, case for cheating, breach of trust and forgery, the High Court proceeded to consider the version of the respondents given out in their petition filed under [Section 482](#), Cr.P.C. vis-a-vis that of the appellant and entered into the debatable area of deciding which of the version was true, - a course wholly impermissible...".

14. We accordingly hold that the High Court has committed grave error of law in quashing the F.I.R. The High Court should be loathe to interfere at the threshold to thwart the prosecution exercising its inherent power under [Section 482](#), Cr.P.C. or under [Articles 226](#) and [227](#) of the Constitution, as the case



may be, and allow the law to take its own course."

13. Thus, it is well settled that the inherent power of the court under [Section 482](#) of the Code of Criminal Procedure should be exercised sparingly and cautiously. The Court should exercise its inherent powers under Section 482 of the Code only when it comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. However, in the instant case, from the material collected by the investigating officer during the course of investigation, prima facie involvement of the petitioner in commission of crime is made out. Moreover, the investigation is at a nascent stage and it would not be proper on the part of this Court to exercise its inherent powers in favour of the petitioner at this stage.

14. In view of the aforesaid discussion, the petition being devoid of merits, stands dismissed. Notice discharged.

(DIVYESH A. JOSHI,J)

LAVKUMAR J JANI