

Ex.	9					
Filed on	03/03/2025					
Registered on	03/03/2025					
Decided on	24/03/2026					
Duration	Y	01	M	00	D	21

**IN THE COURT OF THE SESSIONS DISTRICT JUDGE ,
AT : JAMNAGAR.**

Criminal Revision Application No.	16 of 2025
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Applicant :-

Jigar Govindbhai Madam,
Age about 45 years, Occupation : Business,
Resident of Navagam-ghed,
Near Old Railway Station,
Jamnagar.

V E R S U S

Opponent :-

The State of Gujarat,
Through Public Prosecutor, Jamnagar.

Subject:- Criminal Revision Application under section 397 of
Code of Criminal Procedure, 1973

Appearance:-

Mr.P.M.Buch, learned counsel of applicant.
Mr.D.R.Trivedi, learned counsel of Opponent.

::: J U D G M E N T :::

1. Present criminal revision application has been preferred by the applicant herein (original accused) challenging the order dated 12/12/2024 passed by the Court of learned Judicial Magistrate First Class, Jamjodhpur, District- Jamnagar below Exh.6 in Criminal Case No.795 of 2022) by which prayer of accused regarding discharge him was rejected.

2. It is stated by the applicant that he has been arrested for the offence under Section 452,504,506(2),120B and 114 of the Indian Penal Code in connection with Jamjodhpur Police Station CR No.11202026200523 of 2020, after completion of investigation and charge-sheet has been filed before the Court vide charge-sheet No.32/2020, dated 24/12/2020 and in said charge-sheet, nothing against the present applicant has been mentioned.

It is further stated that nothing was mentioned by the Investigating Officer in charge-sheet about investigation keep pending and no such liberty was kept open. Moreover, name of applicant is not shown as 'absconded'. The learned Judicial Magistrate First Class, Jamjodhpur has taken a 'cognizance' of that first charge-sheet and registered it as 'Criminal Case No.01 of 2021'.

It is further stated that without obtaining permission for further investigation, Investigating Officer added present applicant as accused in connection with above said offence and submitted charge-sheet, which was registered as Criminal Case

No.795 of 2022, which absolutely illegal and against provisions of law.

It is further stated that applicant herein has filed discharge application before trial Court vide Exh.6, which came be to be dismissed without considering the prima facie evidence on record is illegal and liable to be quashed and set aside. That Police officers has intentionally recorded statements of the witnesses by themselves and due to enmity, present applicant was falsely implicated in the present offence. In last prayed to allow present revision application and quashed the order passed by learned Court below Exh.6.

3. Learned advocate Mr.Buch has argued that further statement of complainant, dated 23/3/2021 does not reveal the presence of applicant at the scene of the incident or fact of threats given to the complainant. And in the further statement of the complainant, it is not mentioned that applicant threatened or abused the complainant. And that the complainant has not filed any application or complaint against present applicant. The complainant only states that the people of Jigar Bhai and Karshan Bhai had come to threaten, and it is not mentioned which people of Jigar Bhai had come. And it is also not stated that applicant/accused was present at the time of the incident.

It is further argued that applicant has been implicated in the said crime case only due to old rivalry and that looking at the entire facts of this case, neither complainant nor witnesses have stated that present applicant was involved into said offence in

any manner. As per submission, as a leader of the community, he had only asked to mediate and reconcile the complainant and the accused through persuasion. In last, prayed to discharge present applicant by allowing revision application.

4. On the other hand, the learned Ad.PP Mr.Trivedi has argued that applicant/accused has preferred the application for discharge on the ground that he was not involved into offence. But looking to the further statement of the complainant, dated 23/03/2021, it is specifically stated that Jigar Madam had come to his site frequently and told him to close pooling centre or compromise with him also threatened him. Further on, Jigarbhai and Karsanbhai both were used to come on 13/10/2020 and threatened to kill to employee and got the pooling station shut down and on also 25/08/2020, 02/09/2020 and 10/09/2020, pooling station was shut-down by the applicant/accused by giving threats. Applicant/accused herein has actively participated in the offence. In such circumstances, present revision application is required to be dismissed.

5. Having heard the submissions advanced on behalf of the respective parties and perused the record.

6. The applicant is before this Court calling in question order dated 12/12/2024 passed by the learned Judicial Magistrate First Class, Jamjodhpur below Exh.6 in Criminal Case No.795 of 2022 rejecting the application filed by the applicant under Section 239 read with 245 of the Code of Criminal Procedure and seek discharge from offence accordingly.

7. I have given my anxious consideration to the submissions made by the respective learned advocates and have perused the material on record.

On perusal of record, it appears that applicant herein sought discharge mainly relied upon two grounds ;

- i. That Investigating agency has further investigated the matter under section 173(8) of the Code of Criminal Procedure without permission of the trial court and filed subsequent charge-sheet in the Court.
- ii. That Police Officers have intentionally recorded statements of some witnesses by themselves and due to enmity, applicant herein was falsely implicated in the present case.

8. Now, it is required to go into the merits of the case point viz as per following discussions ;

It is required to note that applicant herein has alleged that Investigating agency has further investigated the case without permission of the Court and filed subsequent charge-sheet, whereas trial Court has taken 'cognizance' of first charge-sheet and registered the charge-sheet as criminal case bearing No.01 of 2021.

On perusal of the record of Criminal Case No.1 of 2021, It appears that vide Exh.3, dated 24/03/2021, Investigating Officer has sought permission from trial Court for further investigation under Section 173(8) of the Code of Criminal Procedure and trial

Court has granted such permission with observation that as per provision of Section 173(8) of the Code of Criminal Procedure, Investigating Officer has not required any such permission for further investigation and directed to submit his report within 60 days.

It is required to note that under the provisions of Section 173(8) of the Code of Criminal Procedure, Police have the inherent right to conduct further investigation without prior permission from the trial court, at this juncture, it would be required to refer said provision as under ;

“173 (8)- Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of subsections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under subsection (2).”

Thus, even where chargesheet has been filed by the police under Sub-section (2) of Section 173 of the Code of Criminal Procedure, the police can undertake further investigation in respect of an offence under Sub-section (8) of Section 173 of the CrPC. So, accused cannot seek discharge solely on the grounds that the supplementary chargesheet was filed without the Magistrate's permission. The argument canvassed on behalf of the accused that there is no such order of the Magistrate concerned regarding further investigation, hence subsequent charge-sheet filed by the Investigating agency is without any authorization and illegal is not tenable at this stage.

At this juncture, it is required to refer the judgment in case of **State through Central Bureau of Investigation Vs Hemendhra Reddy, reported in AIR-2023-SC (Criminal) 1127**, wherein Hon'ble Apex Court has discussed about the question that CBI against the accused persons for the alleged offences on the ground that the CBI could not have undertaken further investigation under sub section (8) of Section 173 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') and filed a chargesheet having once already submitted a final report under sub section (2) of the Section 173 of the CrPC and further observed as follows ;

“65. However, the question before this Court is whether sub section (8) of Section 173 of the CrPC permits further investigation after the Magistrate has accepted a final report (closure report) under sub section (2) of Section 173 of the CrPC. The contention raised on behalf of the accused persons is that acceptance of a closure report would terminate the proceedings finally so as to bar the investigating agency from carrying out any further investigation in connection with the offence.

66. The learned counsel appearing for the accused persons submitted that an order accepting the closure report under Section 190(1)(c) of the CrPC is a judicial order and not an administrative order. Relying on the decision of this Court in Kamlapati Trivedi v. State of West Bengal reported in 1980 (2) SCC 91, it was submitted that when a final report of the police is submitted to the Magistrate and the Magistrate passes an order (a) agreeing with the report of the police and filing proceedings; or (b) not agreeing with the police report and holding that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and takes cognizance of the offence complained of, such order is a judicial order.

67. We are at one with the aforesaid submission canvassed on behalf of the accused persons. However, this is not going to make any difference. What is necessary to be examined is as to whether an order passed under Section 190(1) of the CrPC accepting a final report being a judicial order would bar further investigation by the police or the CBI as in the present case, in exercise of the statutory powers under chapter XII of the CrPC?

68. In State of Rajasthan v. Aruna Devi and Others reported in (1995) 1 SCC 1, a complaint was filed in the Court of Munsif and Judicial Magistrate, First Class, Bilara, against the respondents under various

sections of the IPC. The gravamen of the allegation was that the respondents had, in pursuance of a conspiracy, transferred some land on the strength of a special power of attorney bearing forged signature. The Magistrate, after perusal of the complaint, directed an investigation to be made as contemplated by Section 156(3) of the CrPC. A case was registered thereafter, by the police and a final report was submitted on 18.07.1981 stating that complaint was false. The report came to be accepted by the Magistrate on 23.09.1981. It, however, so happened that the Superintendent of Police had independently ordered further investigation on 24.09.1981 and a challan came to be filed by police against the respondents, inter alia, under Sections 420 and 467 of the IPC. The Magistrate took cognizance on 25.06.1984. A challenge was made to this act of the Magistrate before Sessions Judge, Jodhpur, who dismissed the revision. On further approach to the High Court, the revision was allowed and the order of cognizance was set aside. The State came in appeal under Article 136 of the Constitution.

69. This Court observed in paras 3 and 4 respectively as under:

3. A perusal of the impugned judgment of the High Court shows that it took the view that the Magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. Shri Gupta, appearing for the appellant, contends that this view is erroneous in law inasmuch as Section 173(8) of the Code permits further investigation in respect of an offence after a report under sub-section (2) has been submitted. Sub-section (8) also visualises forwarding of another report to the Magistrate. Further investigation had thus legal sanction and if after such further investigation a report is submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.

4. Shri Francis for the respondents, however, contends that the order of the Magistrate taking cognizance pursuant to filing of further report amounted to entertaining second complaint which is not permissible in law. To substantiate the legal submission, we have been first referred to Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar [1962 Supp (2) SCR 297 : AIR 1962 SC 876 : (1962) 1 Cri LJ 770] , in which a three-Judge Bench of this Court dealt with this aspect. A perusal of the judgment of the majority shows that it took the view that dismissal of a complaint under Section 203 of the Code is no bar to the entertainment of a second complaint on the same facts; but the same could be done only in exceptional circumstances some of which have been illustrated in the judgment. Further observation in this regard is that a fresh complaint can be entertained, inter alia, when fresh evidence comes forward. In the present case, this is precisely what had happened, as on further investigation being made, fresh materials came to light which led to the filing of further report stating that a case had been made out.

The aforesaid decision of this Court has been rightly referred to and relied upon by the High Court in its first order dated 11.09.2014.

75. In *Kari Choudhary v. Mst. Sita Devi and Others* reported in (2002) 1 SCC 714, FIR No. 135 was registered on the basis of a complaint lodged by Sita Devi and investigation was commenced thereafter. During investigation, the police found that the murder of the victim, Sugnia Devi was committed pursuant to a conspiracy hatched by her mother-in-law Sita Devi and her daughters-in-law besides the others. So, the police sent a report to the court on 30.11.1998 stating that the allegations in FIR No. 135 were false. The police continued with the investigation after informing the court that they had registered another FIR as FIR No. 208 of 1998. This Court, *inter alia*, held thus:

“11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation would be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during the investigation that persons not named in FIR No. 135 are the real culprits. To quash the proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.

12. Even otherwise, the investigating agency is not precluded from further investigation in respect of an offence in spite of forwarding a report under sub-section (2) of section 173 of a previous occasion. This is clear from Section 173(8) of the Code.” (Emphasis supplied)

76. Thus, a conspectus of the aforesaid decisions of this Court rendered in cases where final reports (closure reports) had already been submitted and accepted makes the position of law very clear that even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted. It is also evident, that prior to carrying out a further investigation under Section 173(8) of the CrPC, it is not necessary for the Magistrate to review or recall the order accepting the final report.

77. We may summarise our final conclusion as under:

(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting

further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.

(v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.”

Under these circumstances, it may be noted that as discussed above, Sub-section (8) of Section 173 of the Code of Criminal Procedure permits further investigation, and even de hors any direction from the court, it is open to the police to conduct proper investigation, even after the court takes cognizance of any offence on the strength of a police report earlier submitted.

9. Learned advocate for applicant has raised another contention that Police Officers have intentionally recorded statements of some witnesses by themselves and due to enmity, apparent herein was falsely implicated in the present case.

On perusal of the record of Criminal Case No.795 of 2022, it appears that Investigating Officer has recorded the further statement of witnesses. Nareshbhai Nagajanhbai Odedara has stated in his statement dated 11/03/2021 that “ earlier two to three times, Karshanbhai Bhavadiya of Kutiyana and Jigarbhai

Madam of Jamnagar used to come at his site and asked for shut-down the pooling station.”

Thereafter, Investigating Officer has recorded the further statement of witness Rakesh Vishnunarayan Dubay on 23/03/2021 and he stated that “ Jigarbhai Madam and some people came to his above-stated site”

On perusal of further statements of the witnesses recorded by the Investigating Officer, it is crystal clear that applicant herein threatened the employees of the ‘Envision Wind Power Services India Pvt.Ltd./Spring ALT Energy Pvt.Ltd. And thus, his involvement into offence is prima facie proved at this juncture.

10. On perusal of record of trial Court viz Criminal Case No.1 of 2021, it appears that witness Nareshbhai Nagajanbhai Odedara at Exh.46 deposed on oath before the Court on 01/01/2026 and specifically stated about the involvement of Jigar Madama and Karshan Bharvadiya into offence. The witness further stated that both were frequently asked to shut-down the pooling station.

Under these circumstances, applicant/accused plea that he never visited the scene of offence or not threatened any employees or witnesses is not believable at this juncture. Therefore, it appears that, there is no error in rejecting the discharge application of applicant/accused herein.

11. Having carefully considered the finding of the learned trial Court in dismissing the application of prayer of discharge, there is no any irregularity and impropriety in the impugned order.

12. Under these circumstance, as per above discussions, impugned order passed by the learned trial Court appears to be just and legal and does not suffer from infirmity and perversity warranting interference by this Court and order of maintenance passed by the learned trial Court deserves to be confirmed accordingly. Hence, following final order is hereby passed ;

::: F I N A L O R D E R :::

1. Present criminal revision application is hereby **Dismissed**.
2. Impugned order dated 12/12/2024 passed by the Court of Judicial Magistrate First Class, Jamjodhpur below Exh.6 in Criminal Case No.795 of 2022 is hereby **confirmed**.
3. The Record and proceedings of the Criminal Case Nos. 1 of 2021 and 795 of 2022 be sent back to the Trial Court alongwith one true copy of this judgment immediately.

Pronounced and signed in open Court today on this 24th day of March-2026.

Date: -24/03/2026
Place: - Jamnagar.

A J RAVAL/PS

(Nehalkumar Rajeshbhai Joshi)
Sessions Judge, Jamnagar
Code No.: GJ01318