

**Sessions Case No.29/2021**

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**Common order below discharge applications (5 in number) at Exhibit-16 (filed on behalf of accused no.3), Exhibit-36 (filed on behalf of accused no.1 and 6), Exhibit-42 (filed on behalf of accused no.7), Exhibit-54 (filed on behalf of accused no.4) and Exhibit-56 (filed on behalf of accused no.5) in Sessions Case No.29/2021.**  
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**Appearance :-**

Present

Ld. APP Mr. N.H. Patel for the State.

Ld. Advocates for the accused no.1 to 7.

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1. By this common order, I shall dispose of discharge applications (five in number) at **Exhibit-16 ,36, 42, 54 and 56.**
2. In the present case 07 accused have been charge sheeted by the police for commission of offences under sections 304, 467, 284, 120(b), 114 of Indian Penal Code (hereinafter referred to as 'IPC' for short) and under section 15 of Environment Protection Act, 1986 (hereinafter referred to as 'EPA' for short). Out of 07 accused, total 06 accused as

mentioned in the caption of present order have filed discharge applications. However, accused no.2 has not filed any discharge application, but, learned advocate appearing on his behalf has submitted that he shall submit his oral arguments in respect of accused no.2, so far framing of charges against him is concerned without filing any discharge application.

- 3.** Before proceeding further with adjudication of all the aforementioned discharge applications it is necessary to recapitulate the facts of the present case as those emerges out of FIR registered on 25/02/2019 upon the statement of Mr. P.A. Valvi, PI, Kadodara police station (hereinafter referred to as 'complainant' for short) who got recorded his statement to the effect that on 09/02/2019 around 08:30 hours he had received a telephonic information from the concerned Doctor of Sanjivani hospital, Chalthan to the effect that Bhagwanbhai Revabhai Bharwad and Bharatbhai Meghabhai Sathiya have been admitted in their hospital in an unconscious condition as they were found lying unconscious on road near Gokuldharm Society within the vicinity of Chalthan village. They were got admitted by one Bharatbhai Tejabhai Bharwad having mobile no.99098 41009. Upon

inspection, they were declared dead. Due to this, an accident case no.17/2019 was registered and inquest proceedings as envisaged under section 174 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Code' for short) commenced. During inquiry of accidental death report no.17/2019, it came to the knowledge of the complainant that one Praharit Prigment, L.L.P. Company is situated at plot no.38/11, Zaghadiya GIDC, District Bharuch. A license has been granted in its favour by Directorate of Industrial Safety and Health, State of Gujarat; on 01/08/2018 for running factory vide license no.34883 and registration no.1342/20114/2018. As per their partnership deed, 1) Chandubhai Manubhai Kodiya; 2) Ketanbhai Hasmukhbhai Kodiya; 3) Rameshbhai Nanjibhai Padsala; 4) Gunjanbhai Chandubhai Kodiya; 5) Hardik Jivrajbhai Kakdiya; and 6) Dhansukhbhai Unibhai Bhanderi are partners therein in the ratio of 25%, 20%, 25%, 20%, 5% and 5% respectively. Said factory is involved in manufacturing of green colour powder. As raw-materials for prdouction of green colour powder the materials viz. Aluminium chloride, CPC Blue, cupric chloride, chlorine gas, caustic soda lime, dispersing agent etc. are used. During manufacturing of the said colour poly aluminum

chloride -18 to 20%, Hydrochloric acid -30%, Sodium c 10 to 12 % and copper S-90% are also manufactured as byproducts. Amongst those the byproducts Hydrochloric acid (hereinafter referred to as 'HCL' for short) and Poly Aluminum Chloride Solution have to be neutralized and thereafter same are to be sent to Narmada Clean Technology Limited (NCTL) through a pipe line. In NCTL this chemicals are further neutralized and disposed of in sea through Kantiyajal Pumping Station, District Bharuch. As per letter issued by Gujarat Pollution Control Board on 20/12/2018 these byproducts must have PH value 6-9 after influent treatment as per para 3.11 of the aforesaid letter. The aforesaid Praharit Prigment, L.L.P. Company was involved in unofficial and illegal disposal of spent HCL without getting the same neutralized and in order to save the expenses incurred in such neutralization. In the backdrop of this situation, 21 tons spent HCL was handed over to Nirajkumar Vijaykumar Chhajed - dealer of shri Mahavir Enterprise on 08/02/2019. The aforesaid Nirajkumar Vijaykumar Chhajed in his turn handed over Spent HCL for its illegal disposal to Manojbhai Babulal Agrawal - dealer of Sairachna Chemical. In his turn he handed over the same to Amitkumar Ratilalbhai Patel -

dealer of Ayushi Enterprise Chemicals who had used his own tanker no. GJ-02-Z-7927 for illegal disposal of spent HCL on 08/02/2019 and send the same alongwith its driver Indrajit and Cleaner Brajesh to Praharit Prigment, L.L.P. Company, wherein, said tanker was filled with spent HCL for its illegal disposal. Driver Indrajit and cleaner Brajesh in their turn took help from Bharatbhai Tejabhai Bharwad, Rajubhai @ Lalo Gabrubhai Bharwad, Bhagwanbhai Revabhai Bharwad - deceased and Bharatbhai Meghabhai Sathiya - deceased who helped them by way of escorting the tanker in their Cruze car bearing registration no.GJ-06-DG-4562. All of them took the aforesaid tanker to one sewage line in the vicinity of Chalthan to Tatithaiya village on 09/02/2019 around 08:15 hours. While they were disposing of spent HCL-31.5% in the sewage line then on account of poisonous effect of spent HCL two of the persons Bhagwanbhai Revabhai Bharwad and Bharatbhai Meghabhai Sathiya lost their lives and tanker driver Indrajit got seriously injured and he was admitted in Smimer hospital. He was unconscious and under treatment of the concerned Doctor. After registration of the accident death report no.17/2019 further inquiry was undertaken but owners of Praharit Prigment, L.L.P. Company could not submit

any document for selling of spent HCL. In these circumstances, even the officials of Gujarat Pollution Control Board (hereinafter referred to as 'GPCB' for short) took samples from tanker and submitted report that spent HCL was having PH value 0.03%. In these manner, the FIR was registered against as many as 15 persons named in FIR for commission of offences under sections 304, 284, 120 (b), 114 of IPC and section 15 of EPA. During the course of investigation, it was found that one forged MOU was also got prepared by owners of Praharit Prigment, L.L.P. Company (which is available at page 193 for the documents appended to charge-sheet of the present case). Hence, sections 467 and 471 of IPC were also added in the charge-sheet for forgery of the aforesaid MOU.

- 4.** Initiating the arguments, the learned advocate for the accused no.1 and 6 (as per the charge-sheet) i.e. Bharatbhai Tejabhai Bharwad and Rajubhai @Lalo Gabrubhai Bharwad has submitted that they have been falsely implicated in the present case and they have nothing to do with the offences alleged in the FIR as well as in the charge-sheet. He has further submitted that only role of escorting the tanker has been attributed to them in the FIR. He has further submitted

that nothing has been mentioned in the FIR as to how complainant of the present case became conversant of the facts alleged in the FIR and manner of commission thereof, when he was not an eye witness of the occurrence of the present case. He has further submitted that this court cannot take cognizance of offence under section 15 of EPA, since for that purpose, section 19 of EPA shall come into play and cognizance of the offence under section 15 of EPA cannot be taken except on a complaint made by the Central Government or any authority or officer authorized in this behalf by that Government; or any person who has given a legal notice of not less than sixty days in the prescribed manner, qua his intention that he wants to file a complaint. He has further submitted that nothing of this sort has been done by the complainant of the present case and no notice as aforesaid has been given by him or on his behalf to the Central Government or concerned authority. Hence, this court cannot take cognizance of offences under section 15 of EPA. He has further submitted that even offences under section 467 and 471 of IPC will also not be made out against the present applicants-accused, since, they had nothing to do with preparation of the forged MOU which has been

purportedly prepared by the office bearers/owners of Praharit Pigment, L.L.P. Company. He has thus prayed that discharge application at Exh.36 may be allowed and accused no.1 & 6 be discharged from all the sections under which charge-sheet has been submitted against them.

- 5.** Before I proceed further with the arguments of all other learned advocates for remaining accused, it is worthwhile to mention here that so far arguments in context of section 15 of EPA and sections 467 and 471 of IPC are concerned, identical arguments on this point have been submitted by learned advocates for accused no.2 and accused no.4, 5 and 7. Learned advocate for accused no.3 has also submitted similar arguments in connection with offence under section 15 of EPA only. Hence, for the sake of brevity same arguments will not be repeated in the later portion of this order except in observation portion where ever so required.
- 6.** Learned advocate for accused no.2 has submitted that he is real brother of driver Indrajit who is unaware of the where about of driver Indrajit and his family. He has further submitted that though accused no.2 was present on the spot but he was not having within his knowledge as to what were the contents of the tanker and as such no criminal

knowledge or intention can be attributed to him. He has thus prayed that accused no.2 may also be discharged from all the sections leveled against him in charge-sheet.

7. Learned advocate for accused no.3 has vehemently submitted that role attributed to his client is that he is one of the partner of Praharit Prigment, L.L.P. Company. He has further submitted that Spent HCL which is a by product of the manufacturing process of green colour was not a material which could be said to be poisonous or hazardous in nature. He has further submitted that in view of contradictory reports of GPCB and FSL at Exhibit: 47/17 and 47/29 respectively, different contents have been mentioned in context of aforesaid samples drawn from the tanker in the reports issued by both the authorities i.e. GPCB and FSL and as such both the reports are contradictory to each other. He has further submitted that report of GPCB and FSL are too much contradictory in nature that same cannot be reconciled in any manner. He has further submitted that benefit of contradictory reports qua contents of samples has to be given to the accused of the present case. He has further submitted that as a matter of fact his company was entitled to sell the aforesaid byproduct i.e. spent HCL in a legal

manner and same was done by virtue of various invoices as available at page 235 to 241 in the documents enclosed with charge-sheet. He has further argued that even from the postmortem report of deceased as available at Exhibit: 47/41 and 47/44, it cannot be gathered that they had died on account of disposal of spent HCL. He has further argued that no offence whatsoever is made out against his client in the aforementioned circumstances as there is no evidence available qua intention and knowledge of accused no.3 to the effect that he was knowing that such type of occurrence may take place. He has thus prayed that accused no.3 may also be discharged from all the sections under which charge-sheet has been filed against him.

- 8.** Learned Advocates for accused no.4 & 5 have jointly argued that their clients have nothing to do with the offences alleged in the FIR since they are merely dealer of their respective firms. Accused no.4 had sold spent HCL (which he bought from accused no.3) to accused no.5 by way of a proper bill and accused no.5 in his turn sold the same to accused no.7. As such, they are not liable for commission of offences under sections 304 read with 120(b), 114 of IPC. They have also endorsed the arguments of their fellow

learned advocates in context of sections 467 and 471 of IPC and section 15 of EPA. As mentioned hereinbefore and prayed for discharge of their respective clients.

- 9.** Learned Advocate for the accused no.7 has submitted that on the day of occurrence his client was not present in his office and even the bill do not bear his signature as consignee of spent HCL and signature there upon have been forged. He has further submitted that the tanker driver Indrajeet had taken the tanker without and beyond his knowledge for fetching spent HCL from Praharit Prigment, L.L.P. Company in his absence, as such, his client neither had any knowledge nor any intention to commit the offences alleged in the FIR. He has further submitted that in fact in the present case all the accused have been made scapegoats in order to save the real accused who have used political connection. He has further submitted that since his client was not present, hence, his plea of alibi may be taken into consideration. He has further submitted that throughout the present case negligent, tainted and bias investigation has been conducted by the Investigating officer of the present case in order to save the real accused as aforesaid. He has thus prayed that accused no.7 may also be

discharged from all the sections mentioned in the charge-sheet.

- 10.** On the contrary, learned APP for the State has vehemently submitted that all the accused had hatched conspiracy and some of them were even present on the spot at the time of illegal disposal of spent HCL. He has further submitted that when a particular manner of disposing of the spent HCL was provided for to Praharit Prigment, L.L.P. Company i.e. to dispose of the same after getting it neutralized through NCTL, then, why that process was not adopted, since no plausible explanation is coming forward for deviating from the said procedure. He has further submitted that accused no.3 had also prepared forged MOU in the present case, due to which, sections 467 and 471 were added in the charge-sheet. He has further submitted that all the accused have committed the offences mentioned in the charge-sheet after hatching conspiracy inter-se. As such, charges are required to be framed against all of them. However, on the point of section 15 of EPA he has conceded the arguments submitted by all the advocates for the accused.
- 11.** I have heard all the learned advocates for accused as well as learned APP for the State assisted by Investigating officer/

complainant P.A. Valvi (present in the court) and perused the case file carefully.

**12.** At the very outset, this court would like to deal with the common arguments involved in respect of accused no.1,2 and 4 to 7 which are to the effect of no offence under sections 467 and 471 of IPC and section 15 of EPA against any of them. Since, similar arguments were also advanced on behalf of accused no.3 in respect of section 15 of EPA, hence, same are required to be dealt with at first instance.

**13.** So far offence under section 15 of EPA is concerned, it is worthwhile to reproduce the provision of section 19 of EPA which is as follows:

**19. Cognizance of offences.**

□No court shall take cognizance of any offence under this Act except on a complaint made by□

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

- 14.** A perusal of the above section, clearly reveals that in case a private person or any other authorities than those mentioned in section 19 of EPA, wishes to file a complaint under section 15 of EPA, then, a prior written notice of not less than sixty days is required to be given to the concerned authorities mentioned in section 19 of EPA. Admittedly nothing of this sort has been done in the present case. As such, by virtue of aforesaid legal position, this court is unable to take cognizance of offence under section 15 of EPA act and to frame charges against any of the accused of present case under section 15 of EPA. Resultantly, all the accused are entitled to be discharged under section 15 of EPA.
- 15.** Now coming to the arguments of learned advocate for the accused no.1,2 and 4 to 7 qua commission of offences under sections 467 and 471 of IPC, it is also an admitted fact in the case of prosecution that none of the accused except accused no.3 was involved in preparation of forged MOU as available at page 193 of R & P of present case in the documents enclosed with charge-sheet. Admittedly, none of the person except accused no.3 was a beneficiary of the said MOU in any manner nor any allegation have been leveled against them in the entire charge-sheet or the documents appended

to the same. It is also not the case of prosecution that any of the accused except accused no. 3 was even aware of or in any manner privy to preparation of aforesaid forged MOU. Hence, all the other accused except accused no.3 are also liable to be discharged under sections 467 and 471 of IPC.

**16.** Now, coming to sections 304 read with 120(b) and 114 of IPC. It is undisputed fact that on the day of occurrence a tanker filled with spent HCL proceeded from the premises of Prahrit Pigment LLP and two persons who were member of the party which was involved in disposing of spent HCL have lost their lives and one of them i.e. tanker driver Indrajit was under treatment in Smimer hospital. Rather the entire arguments of accused no. 3, 4, 5 & 7 are based upon the submissions that they were entitled for the sale of spent HCL.

**17.** In such circumstances, the postmortem report of both the deceased becomes important. Postmortem report of both the deceased reveals that their lungs were found to be bulky edematous and markedly congested and even surface of both lungs showed multiple patchial hemorrhages. Trachea mucosa was markedly congested and shows little amount of frothy fluid therein. Though their cause of deaths were

deferred till receiving opinion from FSL which was later on opined to be death on account of respiratory failure due to Inhalation of some unknown gaseous poisoning. On the basis of two postmortem report, it can be inferred at this stage that both of the deceased lost their lives on account of inhalation of some poisonous gas like substance.

- 18.** Now, coming to the manner in which spent HCL was meant to be discarded/ disposed of by partnership firm of accused no.3. As per allegations leveled in the FIR, spent HCL was firstly required to be neutralized and then to sent to NCTL through a pipe line. From NCTL this chemical was required to undergo further neutralization process and only thereafter it was meant to be disposed of in sea through Kantiyajal Pumping Station, District Bharuch.
- 19.** In above circumstances, even though, it has been vehemently argued on behalf of accused no.3 that spent HCL could have been sold by his firm in accordance with law, yet, a perusal of various invoices in the name of Shri Mahavir Enterprise, Sairachna Chemicals and Ayushi Enterprise Chemicals reveal that those were prepared on the same day on which tanker was filled and dispatched from the premises of Praharit Prigment, L.L.P. Company and all the persons i.e.

accused no.3, 4, 5 or 7 all the bills in their names clearly reflect that the material contained in tanker was passing from one hand to another on the same day.

- 20.** It is worthwhile to mention here that nothing has been argued that if the product contained in tanker was meant to be sold in a legal manner, then, why accused no.1, 2 and 6 were disposing of the same in a sewage line within the vicinity of Chalthan village which was otherwise meant to be disposed off in sea after further neutralization of the same at NCTL. Even if for once in a while this Court assumes that the accused no. 3 was entitled to sell spent HCL in a legal manner and he also did so accordingly, then why would any person purchase the same only to discard it in sewage line which was not permissible by any stretch of imagination. Further in the considered opinion of this court whenever a product has been sold to a particular person, then, such person atleast can be expected to make some use of the product for his own benefits/profits. But the entire manner in which the product in the present case has been disposed of is shrouded in mystery and raises grave doubts in the mind of court as to why a product which could have been sold in a legal manner, was being disposed of in a discreet manner as

alleged in the FIR. As a result of discreet disposal of the aforesaid product, two persons have lost their lives and one was seriously injured as mentioned hereinabove. All these factors taken together clearly points towards a possibility that the accused might have committed offences under section 304 read with 120(b) and 114 of IPC. There is grave doubt in the mind of this court so far roles attributed to each of the accused qua offences under section 304 of IPC read with 120 (b) and 114 of IPC is concerned.

**21.** So far accused no.3 is concerned in the wake of documents available on record i.e. forged MOU at page 193 and statements of Bhavik Ashokbhai Jain; Shivram Lakhubhai Ilasariya and Rahul Shivram Ilasariya under section 164 of the Code which reveals that accused no.3 had asked for preparation of an ante-dated MOU to Shivram Lakhubhai Ilasariya and Rahul Shivram Ilasariya. As such, these persons prepared a forged MOU, which clearly appears to be valuable security in the wake of facts and circumstances of the present case, then, charges under sections 467 and 471 of IPC are also made out against accused no.3.

**22.** So far plea of alibi taken by accused no.7 is concerned, it is worthwhile to reproduce section 105 of Indian Evidence Act

(hereinafter referred to as 'IEA' for short) which is as follows:

**105. Burden of proving that case of accused comes within exceptions.**

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

- 23.** A perusal of section 105 of IEA clearly reveals that whenever a plea of any of the general exceptions and/or plea like alibi has taken by any of the accused, then, same has to be proved by him and burden of proving the same lies upon him. In context of plea raised by accused no.7, the proper stage will be the stage of defence evidence and not the stage of framing of charges. Even otherwise if the accused are liable to be discharged on account of their absence on the spot only then the same ratio would also have applied to other accused viz. accused no. 3, 4, 5 & 7. So merely on

account of plea of alibi the accused no. 7 can not be discharged in such a serious case.

**24.** Before parting with this order, this court also concedes with the submissions of the learned advocates for all the accused that investigation clearly appears in negligent and tainted in the present case but that alone cannot be made a ground for discharge of the accused. Its effect can only be gathered after going through full fledged trial. So far submissions of learned advocates for accused qua involvement of other persons who were having high political connection in the present case is concerned, they will be at liberty to file application under section 319 of the Code at appropriate stage.

**25.** As discussed hereinabove, this court has grave doubt and strong suspicion in its mind that offences might have been committed by the accused of present case in the manner as discussed in the observations contained in preceding paragraphs of this order. Further it is a well settled law that at the time of final adjudication though accused may claim benefit of doubt on account of certain reasons, grounds or submissions, but it is also a well settled law that at the time of framing of charges even a strong suspicion is sufficient to

frame the charges against the accused. In this regard, I draw my force from **Union of India vs. Prafulla Kumar Samal, (1979) 3 SCC 4, the Honorable Supreme Court** listed the following principles for the exercise of powers under Section 227 of the Code of Criminal Procedure:-

“(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has

to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

**26.** So far the judgments relied upon by learned advocate for accused no.3 are concerned, in the humble opinion of this court, there is difference of facts and circumstances in the present case. The Hon'ble Supreme Court of India has **in Padmausundrao Rao and another v. State of Tamil Nadu and others, 2002 (3) SCC 533**, observed that :

“it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judge made law thereto. Sometimes, difference of one additional fact or circumstance can make the world of difference.”

**27.** As a sequel of aforesaid discussion, following order ensues:

**:: O R D E R ::**

1) The applications at Exh.**16 ,36, 42, 54 and 56** stands allowed in part.

- 2) All the accused i.e. accused no.1 to 7 stands discharged for offence under section 15 of EPA.
- 3) All the accused except accused no.3 stands discharged for offences under sections 467 and 471 of IPC.
- 4) Charges against accused no.3 under section 304, read with 120 (b), 467 and 471 IPC be framed.
- 5) Charges under sections 304 read with 120 (b) of IPC be framed against accused no.4, 5 and 7.
- 6) Charges under sections 304 read with 114 of IPC be framed against accused no.1, 2 and 6.
- 7) Aforesaid charges be framed today itself.
- 8) No order as to cost.

Pronounced in the open Court today on this **6<sup>th</sup> day of April, 2024.**

Date: 06.04.2024  
Place: Bardoli

**(Sachin S. C. Sethi)**  
8<sup>th</sup> Additional District & Sessions Judge,  
**Surat at Bardoli. UIC No. GJ 01540.**

**PPS/KMC**