

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 7663 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No
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DEVANGKUMAR PARESHBHAI VYAS
Versus
STATE OF GUJARAT & ANR.

Appearance:

MR PRATIK B BAROT(3711) for the Applicant(s) No. 1
MR ROHAN SHAH, APP for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL**Date : 28/07/2026****ORAL JUDGMENT**

1. By way of this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant has prayed for the following reliefs.

“(B) Your Lordships may be pleased to quash and set aside the impugned FIR being C.R. No. 11206062210543 of 2021 registered with Satlasana Police Station, District Mehsana, for the offences punishable under Sections 406, 420, 120B of the Indian Penal Code and Sections 13 and 14 of the Securities Contracts Regulation Act, 1956 and

Sections 66(C) and 66(D) of the Information Technology Act, along with all consequential proceedings arising therefrom.

(C) Pending admission, hearing and final disposal of the present application, Your Lordships may be pleased to stay the proceedings of the impugned FIR being C.R. No. 11206062210543 of 2021 registered with Satlasana Police Station, District Mehsana, for the offences punishable under Sections 406, 420, 120B of the Indian Penal Code, and Sections 13 and 14 of the Securities Contract Regulation Act, 1956 and Sections 66(C) and 66(D) of the Information Technology Act, along with all consequential proceedings arising therefrom.”

2. The case of the prosecution in nutshell, as can be reproduced from the impugned FIR is as under:

The fact in this matter is such that, accused No.6 had hired accused Nos.1 to 5 and by installing a mobile phone application namely Market Pulse in the Mobile Phone and Tablet, hatched conspiracy of causing financial loss to the Government of India by doing business of buying and selling of shares without any type of license of Stock Exchange and maintained accounts of increase and decrease in the share prices through Havala. Thus, they hatched conspiracy with intention of causing financial loss to the Government of India by committing financial fraud,

violating the rules of SEBI and as the accused Nos.1 to 3 arrested at the place with muddamal of Mobile Phones Nos.5, Tablet No.-01 and note books in total muddamal of worth Rs. 12,000/- and as the accused Nos. 4 and 6 fled from the place and as the accused No.5 was not found at the place, they have abetted each other in committing the offence and this is the complaint regarding the same.

My name is Mukeshkumar Kamjibhai, unarmed Police Constable, B.No.687, Service at Satlasana Police Station, Taluka- Satlasana, District: Mehsana, Mobile No. 9662263533.

The fact of my complaint is such that, today, I along with you and Head Constable, Dineshbhai Jethabhai B.No.366, Laxmanji Amrutji B.No.285, A.P.C. Ravikumar Devendrakumar, B.No.1074 were present at the Police Station. Meanwhile, you received information that, some persons are operating Dabba trading by using mobile phone in a farm situated near the house of Thakorji Kiaranji Parthiji, in the area of Khadiya in the outskirts of Vaghar Village and that they are present there. On the basis of such information, you along with the staff members left the Police Station and arrived at Vaghar Village and upon personally verifying the received information at the place mentioned in the information, it was found to be true. Therefore, you came to Vaghar Village and summoned two panchas and made them aware about the aforesaid facts and upon going and seeing the place mentioned in the

information along with these Panchas, about five persons were holding mobile phone, tablet and notebooks in their hands and were doing something in the phones. Therefore, in order to catch them, as we condoned them and raided there, they threw the mobile phones and Notebooks from their hands and started fleeing. Three persons out of them, were arrested and two persons fled from there. Upon asking the name and address of these three persons in presence of the panchas, out of the three, first persons stated his name as Thakor Ajitji Parthiji Pratapji age 21 years residing at Vaghar, Taluka Satlasana. Upon asking the second person about his name, he stated his name as Thakorji Prakashji alias Popatji Vinuji alias Amratji Karanaji, age 20 years, residing at Vaghar (Kesharpura seem), Ta.Satlasana. Upon asking name and address of the third person, he stated his name as, Thakor Sureshji Monghaji Javanji age 27 years residing at Vaghar Village, Ta. Satlsana. Moreover, upon collecting the mobile phones and notebooks which the five persons threw at the place and upon seeing the same, there were total four notebooks and other papers containing mobile numbers typed in scattered manner and other writings, four mobile phone and one tablet were found. All the notebooks, papers and mobile phones were collected and were seized for the investigation. Upon interrogating and switching on the Oppo Company mobile phone of Thakor Sureshji, there are sheets indicating increase and decrease of share market were found in open and operational condition in an application namely Market Pulse which was operated on the account of Suresh Thakor,

Mo.No.9904271980 and email ID in English sureshthakor23258@gmail.com. Upon seeing the IMEI number of this mobile phone, they are IMEI (1) 869495053250133/57 abd IMEI (2) 869495053250125/57. The value of the same was counted Rs.3,000/-. Moreover, Upon switching on the Oppo company mobile phone of the other arrested person Thakor Ajitji, sheets indicating increase and decrease of share market were found in open and operational condition on the main screen of this phone and Ajit, Mo.No. 6359086560 is written in my account of a mobile application namely Market Pulse. The IMEI number of this mobile phone are IMEI (1) 863087035731671 and IMEI (2) 863087035731663. The value of the same was counted Rs.1000/-. Moreover, upon frisking Thakor Prakashji alias Popatji Vinuji alias Amarat Karanaji, a basic Lava company mobile phone was found from his pocket. The IMEI numbers of the same are (1) 354774117797508 and IMEI (2) 354774117797516. The value of the same was counted at Rs.500/-. Moreover, a Lenovo company tablet was lying on the ground which was password protected and therefore, it was seized valuing it's worth Rs.1500/-. There were two Vivo company android phones both were password protected, both the phones were seized valuing their worth Rs.3000/- each i.e. total of Rs.6000/-. The notebook seized from these persons at this farm containing accounts and figures of Dabba trading was seized valuing it's worth Rs.00/00/-. Moreover, upon frisking this person no cash was found. Panchnama regarding the said muddamal was drawn in my presence from 14/30 to 15/45 hours and was

seized for the investigation. Moreover, upon interrogating the three arrested persons about the persons who fled from the scene, they have stated that, they were Thakor Manishji Virsangji and that they do not know the name and address of the other person. Moreover, they state that, this business of Dabba Trading is run by Rizvanbhai Sheikh Bhalakvala by hiring individuals (on salary).

(1) Thakor Ajitji Parthlji Pratapji age 21 years, residing at Vaghar, Taluka Satlasana. (2) Thakorji Prakashji alias Popatji Vinuji alias Amratji Karanaji, age 20 years, residing at Vaghar (kesharpura seems), Ta. Satlasana. (3) Thakor Sureshji Monghaji Javanji age 27 years residing at Vaghar Village, Ta. Satlasana, Thakor Manishji Virsangji and the absconding person had committed offence by installing a mobile phone application namely Market Pulse in their Mobile Phones, hatched conspiracy of causing financial loss to the government of India by doing business of buying and selling of shares without any type of license of Stock Exchange and maintained accounts of increase and decrease in the share prices through Havala. In this manner they hatched conspiracy with intention of causing financial loss to the Government of India by committing financial loss to the Government of India by committing financial fraud and violating the rules of SEBI. Therefore, it is my complaint against the aforesaid three persons who got arrested with muddamal of Mobile Phones Nos. -05 Tablets Nos. -01 and notebooks worth Rs. 12000/- and Thakor Manishji Virsangji and one other person who is absconding

along with Rizvanbhai Sheikh Bhalakvavala and all the persons who may be found as accused in the investigation under Section 406, 420, 120B of IPC and under Sections 13, 14 of the Securities Contract Regulation Act, 1956. My witnesses are the fellow staff members and the panch witnesses.

3. Heard learned advocate Mr. A.P. Chokse appearing on behalf of Mr. Pratik B. Barot for the applicant and learned APP Mr. Rohan Shah for the respondent–State.

4. Learned advocate for the applicant, at the outset, submitted that the present FIR is not maintainable as the police constable could not have filed FIR for the offence punishable under the Securities Contract (Regulation) Act, 1956. Learned advocate in the alternatively, submitted that even if the entire case of the prosecution is believed or accepted to be true, none of the ingredients of provisions of Sections 406, 420 of the Indian Penal code are spelt out.

4.1 Learned advocate further submitted that in view even if the of Section 26 of the Act, 1956, present F.I.R. is allowed to be investigated and the investigating officer is allowed to be filed charge-sheet, in that event also, the court below would not be able to take any cognizance under the provisions of the Act, 1956 on a police report.

4.2 To substantiate the said contention, learned advocate for the petitioners has relied on the decision of the

coordinate Bench of this Court in case of Vipulkumar Avantilal Shah v. State of Gujarat being Special Criminal Application No. 1781 of 2018 decided on 15th March, 2018.

5. *Per contra*, learned Additional Public Prosecutor Mr. Rohan Shah submitted that present application under Section 482 of the Code of Criminal Procedure, 1973 may not be entertained as the cognizable offence has been disclosed in the F.I.R. and that serious allegations are made and the offence alleged are serious in nature and therefore, at this stage, this application may not be entertained.

5.1 According to learned Additional Public Prosecutor the ingredients of offences under Sections 406 and 420 of out the IPC and other offences are already spelt and therefore, this Court may not exercise its extra-ordinary jurisdiction conferred under Section 482 of the Code, 1973.

5.2 By making above submissions, learned Additional Public Prosecutor requested this Court to dismiss the present application.

6. Having heard learned advocates for the respective parties and having gone through the materials produced on record, the short question that falls for consideration of this Court is the Court would be able to take whether cognizance of any offence punishable under the Act, 1956 except private complaint filed by Central Government, State Government, Security & Exchange Board of India or

recognized stock Exchange or person?

7. The Coordinate Bench in Vipulkumar Avantilal Shah (supra) held as under:

"8. I find merit in both the submissions put forward by the learned counsel. Section 26 of the Act, 1956 reads as under:-

"26. Cognizance of offences by courts.

(1) No cognizance court of shall take any offence or or punishable under this Act any rules regulations byelaws made thereunder, save on a or complaint made by the Central Government Government or or State the Securities and Exchange Board of India or a recognized stock exchange or by any person.

(2) No court inferior to that of Court of Session shall1 a any offence punishable try under this Act."

9. A plain reading of Section 26 of the Act, 1956, referred above, would suggest that no Court will be able to to take cognizance of any offence punishable under the Act except on a or State Government and Exchange or the Securities of India or a complaint made by the Central Government Board recognized Stock Exchange or a person.

10. Let me assume for the moment that the respondent no.2 herein would fall within the ambit of 'any person'. The issue which falls for my consideration is, whether the court before whom the charge-sheet is filed can take cognizance of

the offence. The word 'complaint' figuring under Section 26 of the Act means, the before Section 2 (d) a court complaint in writing as defined under of the Code of Criminal Procedure. I am conscious of the fact that Section 25 makes the offence under Section 23 of the Act a cognizable offence. Since Section 23 is a cognizable offence, the police would definitely have the power to investigate. To this extent, there is no problem. The police has investigated, charge-sheet is filed. Now the stage has come for the court to take cognizance. In my view, the Sessions Court will not be able to take cognizance on the police report in view of the specific bar contained in Section 26 of the Act. The same is the position with Section 26 of the Securities and Exchange Board of India Act, 1992.

"Section 26 reads thus: "26. Cognizance of offences by courts.

(1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.

(2) No court inferior to that of a court of session shall try any offence punishable under this Act."

11. The law in this regard is well settled. Although the police has power to investigate the offence alleged against the applicant and charge-sheet has been filed, the Court will not be able to take cognizance in view of the specific bar. The investigation carried out by the police can be used for the purpose of filing a complaint in writing before the appropriate

court. To be precise, whatever materials have been collected by the Investigating Officer could be used by the authority for the purpose of filing a complaint before the competent court."

9. So far as allegation of Sections 406, 420 and 120B of the Indian Penal Code is concerned, in my view, if the same is read over it is, then also ingredients of those provisions do not exist and thus, same cannot be allowed to stand.

10. As regards Sections 66(C) and 66(D) of the Information Technology Act, 2000, Section 66(C) provides punishment for identity theft, whereas Section 66(D) provides punishment for cheating by personation by using a computer resource. However, it is not clear as to how the aforesaid provisions are attracted to the case of the present applicant, whose name does not find place in the FIR and has surfaced only during the course of investigation. A plain reading of the FIR does not disclose the ingredients of the offences punishable under Sections 66(C) and 66(D) of the Information Technology Act, 2000. Therefore, prima facie, the said provisions are not attracted to the facts of the present case.

10.1 In view of the above discussion and settled position of law, the present application deserves to be allowed. The impugned F.I.R. along with the all consequential proceedings therefrom are hereby quashed and set aside out.

11. It is, however, clarified that the so-called material collected by the investigating agency during the investigation may be

used to the authority concerned to initiate appropriate proceedings against the applicant in accordance with law.

12. The application stands allowed. Rule is made absolute, accordingly.

MOHD SAIF ULLAH

(P. M. RAVAL, J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MOHD SAIF ULLAH(HC02372), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 28/07/2026 17:57:53