

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 3226 of 2018**

=====

SAIFUDDIN USMAN AGLODIA & ORS.
Versus
STATE OF GUJARAT & ORS.

=====

Appearance:

MR VIKRAM J THAKOR(2221) for the Applicant(s) No. 1,2,3
MR DILIP B RANA(691) for the Respondent(s) No. 3
NOTICE SERVED BY DS for the Respondent(s) No. 2
MR. TIRTHRAJ PANDYA, PUBLIC PROSECUTOR for the Respondent(s)
No. 1

=====

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 22/07/2025

ORAL ORDER

1. Heard, learned advocate Mr. Vikram J. Thakor appearing for the petitioner, learned advocate Mr. Dilip B. Rana appearing for the respondent No.3. and learned Addl. Public Prosecutor Mr. Tirthraj Pandya for the State.

2. By way of this petition, filed under Section 482 of the Criminal Procedure Code, 1973, (for short "Cr.P.C."), the petitioners seek to quash and set aside complaint being CR No.I-06 of 2018 registered before Ditwas Police Station, for the offence punishable under Section 406 read with Section 114 of the Indian Penal Code, 1860, (for short "IPC") and all other further proceedings undertaken in pursuance of the complaint.

3. The brief facts of the case are as under.

3.1. The complaint is alleged that the complainant came to know that contractor who has been given the contract of

fishing by the Government for the period, commencing from 01.07.2017 to 10.06.2022 has violated the conditions of the grant order by catching small fish of less than 500 gms. and has used Gillinet without prior permission of the authority and therefore the complainant and other persons referred in the complaint went on dam where they found huge quantity of small fish. It is further alleged that though as per the conditions of the contract local people are required to be engaged for fishing, the petitioner No.1 contractor has engaged and has brought persons from West Bengal and that is how the offence under Section 406 read with Section 114 of the IPC is alleged and the same is registered.

3.2. Petition filed to quash aforesaid FIR.

4. Learned advocate Mr. Vikram J. Thakor appearing for the petitioner after reading FIR, he would submit that essential ingredients of Section 406 is not established in the case. He would further submit that the nature of FIR is like a PIL. He would further submit that the complainant has no way to file complaint for any breach of contract executed between the fisheries department and petitioner. But the complainant who is unsuccessful bidder, in order to harass the petitioner has filed false and frivolous complaint. He would further submit that Government has not taken any action about alleged breach of condition No.45 and 51(A) of the contract executed between petitioner and fisheries department. Therefore, looking to these facts, he would submit that FIR is manifestly vexatious and filed with oblique motive hence continuation of prosecution against petitioner is abuse of the process of law.

5. On the other hand, learned advocate Mr. Dilip B. Rana appearing for the respondent No.3 - original complainant having refer to affidavit in reply at page No.74 onward would submit that the complainant is living in a same area, he is seriously affected by breach of terms and conditions of the contract executed between the fisheries department and petitioner. He would further submit that since the Government has not taken any action against the petitioner, it constrained the complainant to file questioned complaint against the petitioner. He would further submit that petitioner and officers of fisheries department are hand in glove with each other. Thus, they have not filed FIR for breach of terms and conditions of contract which ultimately not only affected adversely to public exchequer but also right of other fishermen. In this circumstance, he would submit to dismiss petition.

6. Learned Addl. Public Prosecutor Mr. Tirthraj Pandya would submit that State Government has not initiate action for alleged breach of terms and conditions of contract executed between the petitioner and fisheries department. Thus submitted to pass necessary order in facts and circumstances.

7. Having heard learned advocates for both sides and considering the facts of the case, what could be noticed that filing of FIR appears to be result of personal enmity between the petitioner and complainant. The complainant who could not secure the contract for fishing in Kadana Dam, perhaps being aggrieved by such, filed complaint. Be that as it may, since the main allegation made in the FIR is regarding offence of

Sections 406 of IPC, let refer Sections 405 and 406, which reads as under.

“405. Criminal breach of trust —

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

406. Punishment for criminal breach of trust —

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

8. Criminal breach of trust would be established when in any manner, the property is entrusted to the accused or he is in dominion over the property or dishonestly misappropriate or convert to his own use or dispose of the property in violence of any direction of law, or in failure to trust repose or in contravention of any legal contract expressly or impliedly is said to commit criminal breach of trust. This Court in case of **Gumansing Prathvising Parmar & anr. v/s. State of Gujarat & ans. (Criminal Misc. Application (for quashing & set aside FIR/Order) No.7029 of 2018**, exhaustively dealt with the issue referring to various authoritative pronouncement on the subject. Interpretation of Section 405 slated in judgment of **Gumansing Prathvising Parmar (supra)** governs the facts of the present case.

9. Recently, the Apex Court in case of **Sailesh Kumar Singh alias Shallesh R. Singh v/s. State of Uttar Pradesh & Ors. (Criminal Appeal No.2963 of 2025)** in para 13 and 14 criticize the approach of police authority to facilitate complainant to convert civil dispute into the FIR.

10. In the present case, as observed hereinabove, the personal grudges, resentment and bitterness between the complainant and petitioner has resulted into the questioned FIR, in nature of "FIR". The complainant any way has not suffered by alleged act of petitioner. Government / fisheries department has not taken any action for breach of terms and conditions executed between the petitioner and fisheries department. The FIR, on reading, reflects, base of filling that the petitioner has breached terms and conditions of contract. There is no establishment of breach of terms and conditions of the contract between the petitioner and fisheries department, even if it is so, it could be agitated in civil dispute. Apt to note that State Government or fisheries department does not say about breach of contract.

11. In the aforesaid circumstance, the FIR is found to be abuse of process of law and fit to be quashed. In case of **State of Haryana & Orthers vs. Bhajan Lal & Others, reported in 1992 Supp. (1) SCC 335**, findings at serial No.1, 3 and 7 of para 102 squarely applies to the case on hand.

12. For the foregoing reasons, the present petition stands allowed. Impugned FIR being CR No.I-06 of 2018 registered before Ditwas Police Station, District Mahisagar, and all consequential proceedings arising out of the questioned FIR

against the petitioners is hereby quashed. Rule is made absolute. Needless to state that aforesaid findings are confined to decision on this petition, shall not influence any other litigation between the parties.

NITIN MAKWANA

(J. C. DOSHI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: NITIN INDRAVADAN MAKWANA(HCW0110), ENGLISH STENOGRAPHER GRADE I, at High Court of Gujarat on 25/07/2025 18:15:20