

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 9834 of 2026**

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PANKAJKUMAR CHIMANBHAI PARMAR

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR. KRISHNAN M GHAVARIYA(8133) for the Applicant(s) No. 1

MR. TIRTHRAJ PANDYA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE VIMAL K. VYAS****Date : 28/04/2026****ORAL ORDER**

1. Heard learned advocate Mr. Krishnan Ghavariya appearing for the applicant and learned APP Mr. Tirthraj Pandya appearing for the respondent – State.

2. It *prima facie* appears that for the offence committed between 19.12.1997 to 08.07.1999, the impugned FIR was filed on 11.03.2003. It is not in dispute that the impugned FIR was lodged for the offence punishable under Section 406 of the Indian Penal Code, 1860, for which the prescribed punishment is upto three years. It further *prima facie* appears that there is a bar to take cognizance after a period of limitation of three years, as provided under Section 468 of the Code of Criminal Procedure, 1973.

3. It also appears that the applicant had preferred a discharge application before the learned Magistrate on the same ground, which was rejected by the learned Magistrate vide order dated 11.08.2016, against which, Criminal Revision Application No.159 of 2016 was preferred, which was partly allowed by the learned 5th Additional Sessions Judge, Bhavnagar, vide order dated 25.10.2016 and the matter was remanded back to the trial court for decision afresh, in accordance with law. Thereafter, the learned Magistrate, vide order dated 25.09.2017, once again, rejected the discharge application, which was then challenged by preferring Criminal Revision Application No.17 of 2018 before the Sessions Court, and the learned Sessions Judge, vide order dated 21.06.2019, upheld the order dated 25.09.2017 passed by the learned Magistrate. Thereafter, being aggrieved and dissatisfied with the order dated 21.06.2019 passed by the learned Sessions Judge, a Special Criminal Application No.1958 of 2022 was preferred before this Court, which was allowed by a Coordinate Bench vide order dated 19.03.2024, and the matter was again remanded back to the trial court for decision afresh. The Coordinate Bench of this Court, vide order dated 19.03.2024,

has observed in paragraphs Nos.5 to 9 as under :-

"5. Considering this aspect, the order passed below Exh.13 for addition of Sections 409 and 467 of the Indian Penal Code is not sustainable in law. The Trial Court having no jurisdiction to direct the investigating agency to add the penal sections as prayed by the incharge public prosecutor of the case. Thus, the order impugned passed below Exh.13 dated 25.09.2017 passed by the 5th Additional Judicial Magistrate, Bhavnagar and the order of the Sessions Court passed in Revision dated 21.02.2019, are quashed.

6. So far order passed below Exh.12 is concerned, the learned Trial Court while dismissing the discharge application observed that, there is a delay in filing the application as after framing of the charge, this application of discharge is being filed. This finding is contrary to the record as till date, the Court has not framed the charge. Thus, charge. Thus, it seems that in a mechanical manner, the order impugned passed below Exh.12 has been filed and upheld by the Revisional Court without considering the facts on record.

7. Thus, the order passed below Exh.12 dated 25.09.2017 and order of the Revisional Court dated 21.09.2019 are quashed.

8. The matter is remanded to the Trial Court to decide both the applications i.e. Exhs.12 and 13 afresh and decide the same independently without influencing the observations made in the common order. So far Exh.13 is concerned, it should decide after framing of charge.

*9. Accordingly, with the aforesaid directions and observations, present application is **allowed**. This Court has not gone into the merits of the case."*

4. Considering the impugned order dated 11.09.2025, it appears that the learned Magistrate has passed the impugned order without considering the aforesaid observations of the Coordinate Bench of this Court and has again rejected the discharge application without assigning the cogent reasons.

5. In view of the aforesaid, issue **NOTICE** to the respondents, making it returnable on **28.07.2026**.

6. Learned APP Mr. Tirthraj Pandya waives service of notice for and on behalf of the respondent no.1 – State of Gujarat.

7. Considering the peculiar facts on record, let there be an ad-interim relief in terms of paragraph 7(d) till the next date of hearing.

(VIMAL K. VYAS, J)

DEEPAK GEHLOT