

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED
BY SUBORDINATE COURT) NO. 329 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE S.V. PINTO****Sd/-**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT**Versus****PANKAJKUMAR K SINHA - PARTNER OF HARIKRUPA MEDICAL STORES**

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Appearance:**MS.C.M.SHAH, APP for the Applicant(s) No. 1****MR.D K.PUJ(3836) for the Respondent(s) No. 1**

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 22/07/2026****ORAL JUDGMENT**

1. By way of the present Criminal Revision Application, the applicant – original complainant has prayed to quash and set aside the order dated 28.08.2009 passed in Criminal Case No. 536 of 2026 below Exh.31, whereby the learned Judicial Magistrate First Class, Radhanpur has allowed the discharge application preferred by respondent No.2 – original accused and discharged him from the offences punishable under

Sections 18(c) and 27(b)(2) of the Drugs and Consmetics Act, 1940.

2. The facts giving rise to the present revision application are that the Drug Inspector conducted an inspection of M/s. Shree Harikrupa Medical Stores at Lalbaug, Radhanpur, where the respondent – original accused No.3 was a partner, and found that medicines had been stored without the requisite permits and the accused failed to produce purchase as well as sale bills in respect thereof, thereby alleging commission of offences under the provisions of the Drugs and Cosmetics Act, 1940. Consequently, a complaint came to be filed before the Court of the Judicial Magistrate First Class, Radhanpur on 14.06.2006, which was registered as Criminal Case No.536 of 2006. After issuance of summons, accused Nos.1 and 2 could not be served, whereas accused No.3 appeared through his advocate and preferred an application AT Exh.31 under Section 245 of the Code of Criminal Procedure seeking his discharge. The learned Judicial Magistrate First Class, Radhanpur, by order dated 28.08.2009, allowed the said application and discharged respondent – accused No.3 from the criminal case.

3. Being aggrieved and dissatisfied with the order dated 28.08.2009 below Exh. 31 passed by the learned Judicial Magistrate, First Class, Radhanpur in Criminal Case No. 536 of 2006, the State has filed the present criminal revision application.

4. Heard learned APP Ms.C.M.Shah for the applicant and learned advocate Mr.D.K.Puj for the respondent – original accused no.3.

5. Learned APP Ms.C.M.Shah has submitted that the impugned order passed by the learned Judicial Magistrate First Class, Radhanpur, discharging the respondent–accused is contrary to law, the evidence on record, and the contemporaneous proceedings of Criminal Case No. 536 of 2006. It was contended that the material on record, including the Partnership Deed of M/s. Shree Harikrupa Medical Stores and the findings recorded by the Drug Inspector during inspection regarding unauthorized storage of medicines and non-production of purchase and sale records, unequivocally disclose a prima-facie case against the respondent and sufficiently indicate his complicity with the co-accused in the

commission of the alleged offences. Learned APP Ms. Shah has further submitted that the respondent, being a partner of the said firm, is equally responsible for the alleged acts and that the delay occasioned by the absence of the co-accused could not have enured to his benefit; rather, the proceedings against him ought to have been segregated. The learned APP has further argued that the learned Magistrate has erred in prematurely evaluating the merits of the prosecution case and in recording a finding of insufficiency of evidence, which issue can properly be adjudicated only upon a full-fledged trial and hence, the impugned order, being perverse, unsustainable and contrary to settled principles of law, deserves to be quashed and set aside.

6. Learned advocate Mr. D.K. Puj appearing for the respondent–original accused No.3 has strongly opposed the present revision application and submitted that the impugned order of discharge passed by the learned Magistrate is legal, proper and in accordance with law, having been passed after due consideration of the material available on record. It is submitted that the complaint was filed in the year 2006, the respondent came to be discharged in the year 2009 and the

present revision application has been filed only in the year 2011 after an unexplained delay of 573 days, thereby rendering the issue stale. It is further submitted that the revision application itself is not maintainable as the State has directly approached this Court without first availing the alternative remedy before the Sessions Court. Learned advocate further submits that the scope of interference in revisional jurisdiction under Section 401 of the Code of Criminal Procedure is very limited and interference is warranted only when the impugned order suffers from jurisdictional error, patent illegality, perversity or results in miscarriage of justice, none of which exists in the present case. On merits, it is submitted that the prosecution seeks to implicate the respondent only on the basis of the alleged statement of the co-accused recorded during investigation, which is not admissible in evidence against the respondent. It is further submitted that the said statement was allegedly obtained under pressure and coercion and, in any event, the co-accused, in his subsequent statement dated 06.10.2005, accepted full responsibility for the alleged offence and specifically stated that the respondent had already retired from the partnership prior to

the alleged incident. It is submitted that the respondent had joined the partnership on 24.08.2005 and retired therefrom on 09.09.2005, and the prosecution has failed to produce any material to show that any offence was committed during the short period when the respondent remained a partner. It is further submitted that the investigation itself shows that the raid, panchnama and all consequential proceedings were conducted in the presence of the principal accused, who alone was managing the affairs of the medical store, and there is no material to show that the respondent was in charge of or responsible for the day-to-day business of the firm. Learned advocate has also submitted that the respondent is a registered medical practitioner and was entitled to the exemption available under Section 123 read with Schedule K of the Drugs and Cosmetics Act, 1940. It is further submitted that the respondent held only a 5% share in the partnership and had joined the firm merely to ensure the availability of genuine medicines for his patients, but withdrew from the partnership immediately after learning about the conduct of the co-accused. Even if the prosecution case is accepted as it stands, the material on record

does not attribute any active role or criminal conspiracy to the respondent. It is, therefore, submitted that the learned Magistrate has rightly appreciated the material on record while discharging the respondent and that no ground is made out for interference in exercise of the revisional jurisdiction of this Court. Accordingly, it is prayed that the present revision application be dismissed.

7. It would be proper to refer to the law with regard to the scope of interference in a revision application as laid down by the Hon'ble Supreme Court in **Amit Kapoor Vs. Ramesh Chander & Anr.** passed in **Criminal Appeal No.1407 of 2012 (Arising out of SLP {Crl.} No.1516 of 2010)** in Para-12 which is reproduced below:

“12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression ‘prevent abuse of process of any court or otherwise to secure the ends of justice’, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is

based upon the maxim quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.”

7.1. It would be proper to refer the observation made in para-5 by the Hon’ble Supreme Court in the case of **State of Kerala Vs. Puttumana Illath Jathavedan Nomboodiri** reported in **(1999) 2 SCC 452** with regard to the scope of interference in a revision application, is as under:

“5. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappraise the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

7.2. It would be proper to refer observations of the Hon'ble Supreme Court in **Sanjaysinh Ramrao Chavan Vs.**

Dattatray Gulabrao Phalke and Ors. reported in (2015) 3 SCC

123 in Para-14 which is reproduced below:

“14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

8. Having considered the rival submissions advanced by the learned APP for the revisionist–State and the learned advocate appearing for the respondent–original accused No.3, and upon carefully examining the impugned order passed by the learned Judicial Magistrate, First Class, Radhanpur, this Court is of the considered opinion that no ground is made out

for interference in exercise of the revisional jurisdiction under Sections 397 and 401 of the Code of Criminal Procedure. The impugned order clearly shows that the learned Magistrate has considered the pleadings, the documentary evidence produced by the complainant himself, the provisions of Section 245 of the Code of Criminal Procedure and the submissions advanced by both the parties before concluding that the charge against the respondent–accused No.3 was groundless. The findings recorded by the learned Magistrate are based on the material available on record and cannot be said to be illegal, arbitrary, perverse or contrary to the settled principles of law. The documents produced by the complainant clearly establish that the respondent–accused No.3 had retired from the partnership firm on 09.09.2005 and that the partnership stood dissolved prior to the raid conducted on 16.09.2005. The Deed of Dissolution as well as the statements forming part of the prosecution record further show that the day-to-day affairs of the medical store, including the purchase and sale of medicines, were being looked after exclusively by Accused No.2. There is no material on record to show that the respondent–accused No.3

was in charge of or responsible for the business of the firm on the date of the alleged incident or that he had any active role in the commission of the alleged offence. It is well settled that under Section 245(2) of the Code, the Magistrate has the power to discharge an accused at any earlier stage of the proceedings if the charge appears to be groundless. In the present case, the learned Magistrate has exercised such power strictly in accordance with law and on the basis of the very documents relied upon by the prosecution. Therefore, it cannot be said that the learned Magistrate has committed any jurisdictional error or material irregularity warranting interference by this Court. The contention of the learned APP that the respondent should face trial merely because he was once a partner of the firm cannot be accepted. Mere existence of a partnership, in the absence of any material to show that the respondent was responsible for the conduct of the business at the relevant time or had participated in the alleged offence, is not sufficient to compel him to face a criminal trial. Criminal liability cannot be fastened merely on assumptions or on the basis of vicarious liability unless the statute specifically provides for the same and the necessary

foundational facts are established. Equally, the contention that the respondent's involvement can be decided only after a full-fledged trial also deserves to be rejected. When the material produced by the complainant itself clearly shows that no prima facie case is made out against the respondent, compelling him to undergo a criminal trial would amount to an abuse of the process of law, which Section 245(2) of the Code seeks to prevent. It is also well settled that the scope of revisional jurisdiction is very limited. Unless the impugned order suffers from patent illegality, jurisdictional error, perversity or has resulted in a miscarriage of justice, no interference is called for. The revisional Court cannot substitute its own view merely because another view is possible. In the present case, none of these grounds is made out. On the contrary, the learned Magistrate has passed a well-reasoned order based on a proper appreciation of the documentary evidence and the settled principles of law. Therefore, this Court finds no reason to interfere with the impugned order in exercise of its revisional jurisdiction.

9. In view of the aforesaid discussion, this Court finds no infirmity, illegality, perversity or jurisdictional error in the order dated 28.08.2009 passed by the learned Judicial Magistrate, First Class, Radhanpur below Exhibit 31 in Criminal Case No.536 of 2006. The impugned order is well-reasoned, just, and in consonance with the settled principles governing discharge under Section 245(2) of the Code of Criminal Procedure. No ground is, therefore, made out for exercising the revisional powers of this Court.

10. Accordingly, the present Criminal Revision Application fails and is hereby dismissed. The impugned order dated 28.08.2009 passed by the learned Judicial Magistrate, First Class, Radhanpur below Exhibit 31 in Criminal Case No.536 of 2006 is hereby confirmed. Rule is discharged.

11. Record and Proceedings, if received, be transmitted back to the concerned Court forthwith.

Sd/-
(S. V. PINTO,J)

F.S.KAZI