

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 5966 of 2014**

With

**CRIMINAL MISC.APPLICATION (FOR EXTENSION OF INTERIM RELIEF)
NO. 2 of 2022**

In R/CRIMINAL MISC.APPLICATION NO. 5966 of 2014

With

R/CRIMINAL MISC.APPLICATION NO. 10138 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
	YES	
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LALITBHAI KESHUBHAI VADHER

Versus

STATE OF GUJARAT & ANR.

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Appearance in Criminal Misc. Application No.5966/2014
LD SR ADV MR J M PANCHAL ASSISTED BY MR K J PANCHAL(2422) for
the Applicant(s) No. 1
MR RONAK RAVAL, ADDL.PUBLIC PROSECUTOR for the Respondent(s)
No. 1
RULE SERVED for the Respondent(s) No. 2
Appearance in Criminal Misc. Application No.5966/2014
LD SR ADV. MR B S PATEL ASSISTED BY MR K J PANCHAL for the
applicant.
MR RONAK RAVAL, ADDL.PUBLIC PROSECUTOR for the Respondent(s)
No. 1

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CORAM: HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 29/06/2026

COMMON JUDGMENT

1. These applications have been preferred under Section 482 of the Code of Criminal Procedure seeking quashment of the FIR being I-C.R. No. 38 of 2013 registered with Junagadh B-Division Police Station, as well as the charge-sheet dated 01.03.2014 filed in connection therewith for the offences punishable under

Sections 304, 308, 337, 465, 471, 201, 34 and 120B of the Indian Penal Code, wherein the present applicant has been arraigned as accused No. 12.

- 1.1. As per the allegations contained in the FIR as well as the charge-sheet submitted by the Police Sub-Inspector, Junagadh B-Division, and further investigation carried out by the Police Inspector, Crime Branch, Junagadh, it is alleged that the A-Wing of a building known as "Monarch-2," situated at Raiji Baug, Junagadh, bearing Revenue Survey No. 253/1 paiki-1/paiki-3, Block No. 1, collapsed, resulting in the death of two persons and injuries to six others. According to the FIR, the collapse of the building was attributed to poor construction quality. It is further alleged that the premises were being used by labourers for furniture-related work, and that excavation had been carried out in the parking area due to the absence of proper drainage facilities, which also contributed to the collapse. Initially, eight persons, stated to be partners of Mars Developers, were named as accused in the FIR. Subsequently, upon completion of investigation, a charge-sheet came to be filed against 14 accused persons, including the present applicant, which is the subject matter of challenge in the present proceedings before this Court.
2. Heard learned senior advocate Mr. J.M. Panchal, learned senior advocate Mr. B. S. Patel with learned advocate Mr. K.J. Panchal and learned APP Mr. Ronak Raval for the State.

Submissions of the learned advocate for the applicant in Criminal Misc. Application No.5966 of 2014.

3. Learned Senior Advocate Mr. Panchal, appearing for the applicant, submits that the charge-sheet filed against the present applicant who has been arraigned as Accused No. 12, also cites the applicant as Witness No. 82 in the very same charge-sheet. It is further submitted that the incident in question occurred on 10.02.2013, the FIR came to be lodged on 11.02.2013, and after a lapse of nearly one year, the charge-sheet was filed on 01.03.2014. Even the supplementary charge-sheet filed against the other accused reflects a similar position. Learned Senior Advocate Mr. Panchal further submits that the present applicant has been serving with the Junagadh Mahanagar Palika since 1984, initially as an Overseer, thereafter promoted as City Engineer, and subsequently as Executive Engineer. It is contended that the applicant has maintained an unblemished service record and has discharged his duties diligently, and no departmental inquiry has ever been initiated against him during his tenure.
- 3.1. It is submitted that, as per the investigation and the charge-sheet, the allegation against the applicant pertains to an alleged conspiracy with the builders in granting development permission in absence of requisite documents such as soil test report, foundation design, frame work design, steel design, slab design, progress reports, slab design and Form Nos. 6(A), 6(B), 6(C), and

6(D). It is contended that the development permission was granted upon a recommendation, wherein the applicant, along with the Town Planning Officer and the Commissioner, had signed the checklist for building permission. Learned Senior Advocate submits that the collapse of the building occurred due to excavation carried out in the basement using heavy machinery (breakers) owing to the absence of proper sewage disposal arrangements and using of poor quality material, which weakened the foundation. It is contended that, by no stretch of imagination, the applicant can be held liable for poor construction, nor was it his duty to supervise or verify the structural quality of the construction. It is further submitted that the responsibility for verifying the quality of construction material and structural design lies with the structural engineer, site supervisor, and the builder. The role of the applicant, being a government servant attached to the Municipal Corporation, was limited to scrutinizing documents and making recommendations for grant of construction permission to the higher authorities, namely the Town Planning Officer and the Commissioner. The applicant was not entrusted with any duty to personally inspect the construction site or verify structural integrity. It is also submitted that as per the General Development Control Regulations (GDCR) applicable to various Urban Development Authorities, including Rajkot, Jamnagar, and Bhavnagar, the authority is not liable for structural soundness,

workmanship, or quality of materials used in construction. In view of such provisions, the applicant cannot be held responsible for alleged deficiencies in construction.

- 3.2. It is submitted that considering the said GDCR the present petitioner remotely cannot be said liable for the poor construction. Further, it is submitted that by virtue of office orders issued by the Commissioner of Junagadh Mahanagar Palika during the period 2006–2008, the responsibilities relating to construction were assigned to the Town Planning Officer. Additionally, the development permission was granted on 31.08.2010, valid for one year up to 31.08.2011. During this period, with effect from 05.07.2011, the jurisdiction and powers concerning development permissions were transferred to the Junagadh Urban Development Authority as per Section 27, 30 and 32 and 34 of the Gujarat Town Planning Act, thereby divesting the Municipal Corporation and consequently the applicant of any further authority or responsibility in the matter. It is further contended that, as per the GDCR, submission of a soil test report is not mandatory, and even post-incident, no conclusive material has been produced to establish that the land was incapable of supporting the structural design. The prescribed format for development permission does not mandate submission of such a report. Learned Senior Advocate submits that the duties of the Executive Engineer are confined to ensuring compliance with parameters such as permissible built-up area, floor

space index, height restrictions, open and marginal spaces, land use, provisions for stairs, lifts, corridors, parking, sanitary facilities, lighting, and ventilation. Therefore, the applicant cannot be said to be connected with or responsible for the structural aspects of construction. It is further submitted that there is no mens rea attributable to the applicant. The collapse occurred due to weakening of the foundation caused by excavation for drainage purposes using heavy machinery. Moreover, out of three blocks constructed on the same plot, only Block 'A' collapsed, which further diminishes the significance of the allegation regarding non-obtaining of a soil test report. In the absence of any material establishing involvement or nexus of the applicant with the alleged offences, it is submitted that continuation of the proceedings would amount to an abuse of the process of law. Accordingly, it is prayed that the impugned FIR and all consequential proceedings be quashed and set aside.

Submissions of the learned advocate for the applicant in Criminal Misc. Application No.10138 of 2014.

4. In addition to the common submissions advanced by the learned Senior Advocate Mr. Patel, assisted by the learned advocate Mr. Panchal, as recorded hereinabove, it is further submitted that, as per the case of the prosecution, the present applicant was serving as the Commissioner of the Junagadh Mahanagarpalika during the period from 02.08.2006 to 31.01.2011. It is

submitted that the principal allegation against the present applicant is that he granted development/construction permission to the builders despite the absence of soil testing reports, foundation design, fram-work design, steel design, slab design, Forms A, B, C and D, and progress reports, thereby committing gross negligence. Learned senior advocate Mr. Patel submitted that, as per the report of the GARY, the building collapsed due to poor and substandard construction. Therefore, the present applicant cannot be held liable for the offences alleged in the chargesheet. It is submitted that the applicant had neither the duty nor the authority to check, inspect or verify whether the material used by the builder in the construction was of the requisite quality or whether the construction was carried out in accordance with the approved structural design. It is submitted that the responsibility for ensuring the quality of construction, structural stability, use of proper materials and supervision of the work squarely rests upon the structural engineer, the site supervisor and the builder. The present applicant, being a Government servant serving as the Commissioner of the Mahanagarपालिका, was required only to consider the proposal placed before him along with the opinions and recommendations of the technical officers of the Corporation while granting development permission. It is submitted that the applicant was entitled to rely upon the technical opinions furnished by the subordinate engineering staff and that it was never his duty to

personally inspect the construction site or verify the quality of the structure or the materials used.

- 4.1. It is further submitted by the learned senior that the development permission was granted on 31.08.2010 and was valid for a period of one year, i.e. up to 31.08.2011. However, the present applicant retired from service on 31.01.2011, barely five months after granting the permission and much before the expiry of its validity period. Thus, according to the learned counsel, by no stretch of imagination can the present applicant be connected with the offences alleged in the chargesheet. It is also submitted that the prescribed format for an application seeking development permission is provided under the General Development Control Regulations (GDCR) framed under the provisions of the Bombay Provincial Municipal Corporations Act. Neither the provisions of the BPMC Act nor the GDCR cast any statutory duty upon the Commissioner to verify the structural design, certify the quality of construction or building materials, or independently examine the structural safety of the proposed construction before granting development permission.
- 4.2. It is further submitted that the allegations against the present applicant are based merely on presumptions, solely because he signed the sanctioned plan and the checklist placed before him by the technical staff. It is submitted that the note recommending grant of development permission had been processed and placed

before the applicant by the competent technical officers, and there was no occasion or reason for the applicant to doubt the correctness of the opinion or recommendations so placed before him. Learned senior advocate Mr. Patel further submitted that, as per one of the conditions contained in Form No.D governing grant of development permission, the builder is required to submit the structural design in conformity with the provisions and specifications prescribed by the Bureau of Indian Standards (BIS) within a period of 60 days from the grant of permission. In the present case, no structural design was ever submitted by the builders within the prescribed period. By that time, the present applicant had already retired from service on 31.01.2011. In the aforesaid background, it is submitted that continuation of the criminal proceedings against the present applicant, who was serving as the Commissioner of the Junagadh Mahanagarपालिका at the relevant point of time, would amount to an abuse of the process of law.

5. *Per contra*, learned APP Mr. Raval, appearing for the State, has submitted that the present applicant Executive Engineer had recommended the grant of development permission and had appended his signature to the application form submitted on 03.05.2010. It is contended that, on the basis of such recommendation, development permission came to be granted for construction of a multi-storeyed building by Commissioner. It is further submitted that the said

permission was valid up to 30.08.2011; however, neither was the permission renewed, nor was the construction completed within the stipulated period. It is contended that, as per the applicable rules, occupancy or use of the premises is permissible only upon issuance of Building Use (BU) permission. Despite the same, the flats were allotted, and the occupants had engaged labourers for carrying out furniture and POP work. Learned APP submits that at the time of seeking development permission, neither the structural design was produced nor was any soil testing report submitted. It is further contended that, as per the governing regulations, the Government-approved engineers were required to submit progress reports, and only upon verification of such reports, further permissions were to be granted. However, no such progress reports in prescribed Form Nos. 6(A), 6(B), 6(C), and 6(D) were submitted. It is further submitted that, upon inspection, it was found that on the western side of Block 'A', particularly in the parking area, fresh excavation work had been carried out and sewage water accumulation was detected. It is also contended that Block 'C' was found to be damaged. As per the reports of the Forensic Science Laboratory (FSL), Gujarat Analysis & Research Yard (GARY), Executive Engineer, and Research Officer, the samples collected from the site failed to meet the requisite standards. It is, therefore, submitted that despite the permission being valid from 31.08.2010 to 30.08.2011, the concerned officers, including the present applicants,

failed to call for or verify the mandatory progress reports, which ultimately resulted in the collapse of the structure, causing the death of two persons and grievous injuries to six others. In view of the aforesaid, it is urged that the present application deserves to be dismissed, and the trial be permitted to proceed in accordance with law.

6. Having considered the submissions advanced by the learned advocates for the respective parties, and upon perusal of the allegations made in the FIR as well as the material placed on record along with the charge-sheet, it emerges that on the fateful day, i.e., 10.02.2013, the A-Wing of the building "Monarch-2," situated at Raiji Baug, Junagadh, collapsed, resulting in the death of two persons and injuries to six others. It further appears that on 11.02.2013, the Commissioner directed the present applicant who is Executive Engineer namely Mr. L.K.Vadher to lodge a complaint against the persons responsible for the said incident. However, when Mr.Vadher approached the concerned police station, the FIR came to be registered by the Police Sub-Inspector, Timbawadi Police Station. Upon perusal of the recitals of the FIR, it transpires that the information furnished by the present applicant, namely Mr. L.K. Vadher, Executive Engineer, formed the basis of the details regarding the construction. It is an undisputed position that development permission had been granted for construction of a basement, ground floor, and nine upper floors. The said permission was granted on 31.08.2010

and was valid for a period of one year, expiring on 30.08.2011. However, thereafter, neither any completion certificate was obtained nor was any application for renewal submitted. It further emerges that prior to obtaining Building Use (BU) permission, the units in the building were allotted, and interior works such as furniture activities had commenced. Initially, the FIR came to be registered against the builders and partners of Mars Developers. Subsequently, upon completion of investigation, a charge-sheet came to be filed against 14 accused persons for the offences punishable under Sections 304, 308, 337, 465, 471, 201, 34 and 120B of the Indian Penal Code, including the present applicant, who has been arraigned as Accused No. 12 and 13.

- 6.1. As per the panchnama drawn at the site, it was found that excavation work for laying a sewage line was being carried out by using heavy machinery, namely breakers, and such work had been ongoing for approximately one month prior to the incident. Subsequent to the collapse of the structure, several tests were conducted by Gujarat Analysis & Research Yard (GARY), including testing of concrete, steel samples, building materials, and cement concrete. However, the charge-sheet does not disclose that any soil testing was conducted to assess whether the land was capable of bearing the structural load. The allegation against the present applicant-Executive Engineer and Commissioner is that, while recommending the grant of development permission, such a soil test report was not called for. However, upon

perusal of the recommendation form signed by the Executive Engineer along with the Town Planning Officer and the Commissioner which is in the prescribed format, does not reflect any requirement of such a test. On the contrary, it appears that Mr. Vadher, at Serial No. 7 of the recommendation, had specifically stipulated that the structural design was required to be prepared in accordance with the applicable ISO provisions and was to be submitted within 60 days from the date of issuance of permission by the authority. On the basis of such recommendation, the Commissioner granted permission for construction of the high-rise building. This Court has also referred to the statement of the witness, namely Govind, who was entrusted with the excavation work using breakers. As per his statement, such excavation work had been ongoing for a considerable period prior to the incident, which prima facie indicates that the foundation of the building may have been weakened due to such activities.

7. This Court has also referred to the General Development Control Regulations (GDCR), notified by the Government of Gujarat vide notification dated 18.05.2002 for the Ahmedabad Urban Development Area, wherein the requirements to be fulfilled for grant of development permission are stipulated as under:-

“5.3.1 GRANT OF DEVELOPMENT PERMISSION

shall mean acceptance by the Authority of the following requirements:

- i) Permissible built-up area.

- ii) Permissible floor space index.
 - iii) Height of a building and its various stories.
 - iv) Permissible open spaces enforced under regulations, C.P., Marginal spaces, other open spaces, set backs etc.
 - v) Permissible use of land and built spaces.
 - vi) Arrangements of stairs, lifts, corridors and parking.
 - vii) Minimum requirements of high-rise buildings including N.O.C. from Fire Officer/Fire Safety Consultant as appointed by the Appropriate Authority.
 - viii) Minimum requirement of sanitary facility and other common facility.
 - ix) Required light and ventilation.
- Provided that it shall not mean acceptance of correctness, confirmation, approval or endorsement of and shall not bind or render the Authority liable in any way in regard to:
- i) Title of the land or building.
 - ii) Easement rights.
 - iii) Variation in area from recorded areas of a plot or a building.
 - iv) Structural reports and structural drawings.
 - v) Workmanship and soundness of material used in construction of the building.
 - vi) Location and boundary of the plot.”

7.1. As per Clause 5.4 relating to liability, it is provided that, notwithstanding any development permission granted under the Act and these regulations, any person undertaking any development work shall continue to be wholly and solely liable for any injury or damage or loss whatsoever that may be caused to any one in or around the area during such construction and no liability whatsoever in this regard shall be cast on the Authority.

8. At the time of making an application for grant of development permission, the following aspects are required to be duly examined and taken into consideration:-

“(i) Every person, who gives notice under relevant section of the Act, shall submit satisfactory documentary proof of his right to build, provided that the authority may dispense with this requirement in- case where it is satisfied regarding the ownership of land bases of any documentary evidence. on the

(ii) The notice under relevant saction for the erection or re-erection of a building shall be in the prescribed Form-C alongwith the following plans and sections and information in accordance with the form prescribed by authority.

(a) A Key plan showing the position of the site.

(b) A block plan of the Building.

(c) (i) A plan of every floor and section of every storey, floor and roof of the building, with projections, if any, showing the use of every room or position of the building.

(ii) front elevation or other elevations, if required.

(d) A plan indicating parking spaces, if required under these bye-laws. The key-plan, the block-plan, the floor-plan, section and elevation shall be drawn as prescribed under these bye-laws.

(e) A report of the structural designer in regard to the proposed building shall be submitted in Form-Y prescribed under these bye-laws.

(iii) Plan and sections shall be to a scale of not less than 1:100 or if the building is so extensive as to render a smaller scale necessary, not less than 1:200 and the block plan shall be to a scale not less than 1:500 or if the site is as extensive as to render a smaller scale necessary not less than 1:1000.

iv) There shall be shown upon the plans and sections--

(a) The level of the site of the building, the level of the lowest storey of the building, and the level of any street adjoining the curtilage of the building in relation to one another.

(b) The position, form and dimensions of the foundations, walls, floors, roofs, chimneys and the various parts of the building,

means of ventilation and accesses to the various parts of the building and its appurtenances.

(c) The form and dimensions of every water-closet, privy, urinal, bath-rooms, cess-pool, well and water-tank or cistern to be constructed in connection with the building.

(d) Area classified for exemption of built-up area calculation.

(v) There shall be shown upon the block-plan:

(a) The site and position of the building and of the appurtenances of the properties immediately adjoining the building.

(b) The position and width of every street adjoining the curtilage of the building

(c) The size and position of every yard and open space belonging to the building.

(d) The position of every water-closet, privy, urinal, bath-rooms, cess-pool, well or cistern in connection with the building other than those shown in the detail plan.

(e) The lines of drainage of the building, the size, depth and inclination of every drain, and the means to be provided for the ventilation of the drains.

(f) The position and level of the out-fall of the drains.

(g) The position of sewer, where, the drainage is intended to be connected to a sewery.

(h) Consolidated open spaces and other open spaces required under these bye-laws.

(vi) Every plan or amended plan mentioned above shall be coloured with fixed colours as follows :-

(a) Block Plan: Proposed work in red, existing work in black, grey or natural tint, open spaces uncoloured, work to be removed in yellow and consolidated open spaces in green to be clearly shown on the plan.

(b) Plans and Sections: Proposed work in white lines if on blue ferro prints and in red lines if on white coloured prints.

(c) Deviations :- In red if on blue prints and in black if on white prints. Brick work, wood-work, R.C.C. work or steel work shall each be differently specified work previously approved in yellow.

(d) All the drainage work and drainage lines shall be shown in brown colours together with the location of the sewer trap chamber and the depth of the street connections.

(c) Deviations during Construction:- If during carrying out of development, any deviation of a substantial nature from the approved plan is intended to be made, the revised plan showing the deviations shall be submitted and the procedure laid down for the original proposal shall apply mutatis mutandis.”

9. Upon perusal of the aforesaid documents, it does not indicate any requirement on the part of the applicant i.e. Executive Engineer and Commissioner to undertake site inspection, verify the quality of construction, or examine the structural design of the building. Upon perusal of the aforesaid provisions, it does not appear that any statutory duty is cast upon the applicants, namely the Executive Engineer and the Commissioner, to undertake site inspection, verify the quality of construction, or independently examine the structural design of the building before granting development permission.
10. This Court has also referred to the provisions of the Gujarat Provincial Municipal Corporations Act, more particularly Sections 253, 254, 257 and 259, which are reproduced hereinbelow:-

“Section 253 of the Gujarat Provincial Municipal Corporations Act, 1949 – Notice of intention to erect building:

Every person who intends to erect a building shall give notice of such intention in writing to the Commissioner in such form as may be prescribed by the rules or bye-laws.

Section 254 of the Gujarat Provincial Municipal Corporations Act, 1949 – Prohibition of building without permission:

No person shall erect or commence to erect any building or execute any of the works specified in Section 253 except with the previous permission of the Commissioner, nor otherwise than in

accordance with the provisions of this Act and the rules and bye-laws made thereunder.

Section 257 of the Gujarat Provincial Municipal Corporations Act, 1949 – Power of Commissioner to inspect buildings or work:

The Commissioner may, at any time during the erection of any building or the execution of any work described in Section 254, without giving previous notice of his intention so to do, enter into or upon any building or land for the purpose of inspecting such building or work.

Section 259 of the Gujarat Provincial Municipal Corporations Act, 1949 – Completion certificate and permission to occupy:

No person shall occupy or permit to be occupied any building or part thereof, or use or permit to be used the same, until a completion certificate has been obtained in respect of such building from the Commissioner in the manner prescribed, and the Commissioner has granted permission for the occupation or use of the building.”

10.1. Upon perusal of the aforesaid statutory provisions, it is evident that the Commissioner is empowered to carry out inspection of any building under construction or any work contemplated under Section 254 at any stage, without prior notice. It is further pertinent to note that, at the time of filing of the charge-sheet, Mr.L.K.Vadher was initially shown as Accused No. 2 and, at the same time, was also cited as Prosecution Witness No. 82. This circumstance prima facie indicates that the Investigating Officer had initially treated the applicant as a witness, but subsequently chose to array him as an accused.

10.2. It also emerges from the record that the Mr.R.M.Sharma, who was serving as the Commissioner, retired from service within a period of five months from the date of granting the development permission. The said permission remained valid for a period of one year

from the date of its issuance. After the expiry of the said period, neither any application for renewal nor any application for extension of the development permission was submitted. In the aforesaid circumstances, the present applicant cannot be held liable for any construction carried out thereafter.

10.3. In the aforesaid factual backdrop, the principal question that arises for consideration before this Court is whether the material collected during the course of investigation discloses that the present applicant had committed any act amounting to gross negligence or recklessness so as to attract the offence punishable under Section 337, 304 and 308 of the Indian Penal Code, and whether, prima facie, the requisite mens rea or culpable intent, essential to bring such negligent act within the ambit of criminal liability, under sections 304 and 308 of the Indian Penal Code is made out ?

10.4. To examine the aforesaid issue, it is necessary to refer to the relevant provisions of the Indian Penal Code, namely Sections 304, 308, 337, 465, 471, 201, 34 and 120B, which are reproduced hereinbelow:-

“Section 304 of the Indian Penal Code – Punishment for culpable homicide not amounting to murder:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge

that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

Section 308 of the Indian Penal Code – Attempt to commit culpable homicide:

Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Section 337 of the Indian Penal Code – Causing hurt by act endangering life or personal safety of others:

Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Section 465 of the Indian Penal Code – Punishment for forgery:

Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 471 of the Indian Penal Code – Using as genuine a forged document:

Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

Section 201 of the Indian Penal Code – Causing disappearance of evidence of offence, or giving false information to screen offender:

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, or gives any information respecting the offence which he knows or believes to be false, with the intention of screening the offender from legal punishment, shall be punished in accordance with the gravity of the offence.

Section 34 of the Indian Penal Code – Acts done by several persons in furtherance of common intention:

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Section 120B of the Indian Penal Code – Punishment of criminal conspiracy:

Whoever is a party to a criminal conspiracy shall be punished with imprisonment of either description for a term as provided for the offence, or with fine, or with both, as the case may be.”

10.5. For the purpose of attracting the provisions of Section 304 of the Indian Penal Code, it would be apposite to refer to the definition of “culpable homicide” as provided under Section 299 of the IPC. Culpable homicide constitutes the first category of unlawful homicide and is defined as the causing of death by doing: (i) an act with the intention of causing death; (ii) an act with the intention of causing such bodily injury as is likely to cause death; or (iii) an act with the knowledge that such act is likely to cause death. Culpable homicide is dealt with under Sections 299 and 304 of the IPC, whereas non-culpable homicide is governed by Section 304 of the IPC. Culpable homicide is further classified into two categories: (i) culpable homicide amounting to murder, covered under Section 300 read with Section 302 of the IPC; and (ii) culpable homicide not amounting to murder, punishable under Section 304 of the IPC. The ingredients of “intention” and “knowledge,” as envisaged under Section 299, postulate the existence of a positive mental state or mens rea, which is essential for constituting the offence. The third limb of Section 299 contemplates knowledge of the likelihood of death

resulting from the act. In the scheme of the IPC, culpable homicide is the genus, while murder is its species, thus all murders are culpable homicide, but not all culpable homicides amount to murder. A plain reading of the provision makes it evident that the first and second clauses of Section 299 pertain to intention (in addition to knowledge), whereas the third clause pertains solely to knowledge and not intention. Both “intention” and “knowledge” denote distinct degrees of mental culpability. The mental element in culpable homicide, therefore, comprises three species of mens rea: (i) intention to cause death; (ii) intention to cause such bodily injury as is likely to cause death; and (iii) knowledge that death is likely to ensue. An act on the part of the accused, if found to be rash or negligent and constituting a direct, proximate, and efficient cause of death, may be held to be the cause of death attributable to such rash and negligent act.

10.6. Section 308 of the Indian Penal Code provides for punishment in cases of attempt to commit culpable homicide. Upon consideration of the material collected by the Investigating Officer, as discussed hereinabove, it does not even prima facie disclose any act attributable to the accused which was committed with the knowledge that such act was likely to cause the death of a human being. It is true that at the stage where only the charge-sheet has been filed, the scope for quashing the entire FIR, particularly in a case involving loss of human life, is limited. However, there must exist at least some material

on record which, prima facie, indicates that the accused had committed an act with the requisite knowledge that such act was likely to result in death. In the present case, the entirety of the material relied upon by the prosecution, as elaborately discussed in the preceding paragraphs, fails to substantiate or support the invocation of serious offences under Sections 304, 308, 337, 465, 471, 201, 34 and 120B of the Indian Penal Code.

10.7. Section 337 of the Indian Penal Code provides for punishment for causing hurt by an act endangering life or the personal safety of others. For attracting the ingredients of the said provision, the degree of negligence must be of a high order, i.e., gross negligence. Negligence which is neither gross nor of such a high degree may give rise to civil liability however, the same would not constitute a sufficient basis for criminal prosecution.

10.8. Upon referring to the decision of the Apex Court in **Jacob Mathew vs. State of Punjab**, reported in **(2005) 6 SCC 1**, it has been observed and clarified that negligence in civil law does not necessarily amount to negligence in criminal law. The Court has held that, for negligence to constitute an offence, the element of *mens rea*, i.e., a culpable state of mind, must be established. It has been further held that, for negligence to attract criminal liability, the degree of negligence must be gross or of a very high order. Mere negligence, which is

neither gross nor of such a degree, cannot form the basis for prosecuting a person under criminal law.

11. Now, reverting to the facts of the present case, as discussed hereinabove, the report indicates that the collapse of the building occurred primarily on account of the weakening of the foundation caused by excavation undertaken for drainage purposes by using heavy machinery. It also emerges that the use of substandard construction material was one of the contributing factors leading to the collapse of the building. It is true that the unfortunate incident resulted in the loss of two human lives. However, at the highest, the role attributed to the present applicants, who were Government servants serving with the Municipal Corporation, may amount to negligence in scrutinising the documents and making recommendations. Such negligence, however, cannot be said to be so gross or of such a degree as to warrant their prosecution and trial for the offences alleged. It is also pertinent to note that no departmental inquiry culminating in any finding of misconduct was concluded against the present applicants. In the aforesaid background, the allegations levelled against the present applicants, read with the material collected during the course of investigation, do not prima facie disclose the commission of any act done with the knowledge that it was likely to cause death, albeit without any intention to cause death, so as to attract the provisions of Section 304 of the Indian Penal Code. Similarly, the material on record does not disclose the degree of gross negligence

or recklessness necessary to attract the ingredients of Section 337 of the Indian Penal Code.

- 11.1. Considering the overall facts and circumstances of the case, and upon evaluating the allegations levelled against the present applicants, particularly with regard to their role in signing the checklist and processing the proposal for grant of development permission, this Court is of the opinion that the material on record does not disclose the commission of the offences alleged against them. Consequently, continuation of the criminal proceedings against the present applicants would amount to an abuse of the process of law and, therefore, the prosecution deserves to be quashed.
12. Admittedly, there are no specific allegations against the present applicant insofar as the offences punishable under Sections 465, 471 and 201 of the Indian Penal Code are concerned. In respect of the remaining provisions, namely Sections 34 and 120B of the IPC, the material on record does not disclose any meeting of minds or any concerted action so as to prima facie establish the offence of criminal conspiracy.
13. At this stage, it would be apposite to refer to the decision of the Apex Court in **State of Haryana v. Bhajan Lal**, reported in **1992 Supp (1) SCC 335**, wherein the Hon'ble Court has illustratively laid down certain categories of cases in which the extraordinary jurisdiction under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of

Criminal Procedure may be exercised for quashing of an FIR, either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Reference is made to paragraph 102 of the said judgment:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific

provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13.1. The present case is squarely covered with the parameters laid down by the Apex Court in the case of ***Bhajan Lal (supra)***, particularly Categories (iii) and (v).

14. In view of the aforesaid, the present applications deserve to be allowed and are accordingly allowed. The impugned FIR being I-C.R. No. 38 of 2013 registered with Junagadh B-Division Police Station, as well as the charge-sheet dated 01.03.2014 is hereby quashed and set aside. Consequently, all further and consequential proceedings arising therefrom shall also stand quashed and set aside.

15. Rule is made absolute accordingly.

(M. K. THAKKER,J)

M.M.MIRZA / NIVYA NAIR