

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 10901 of 2026**

=====

ZUHAIR ZUBAIRBHAI HAWAWALA
Versus
STATE OF GUJARAT & ANR.

=====

Appearance:

A S TIMBALIA(7372) for the Applicant(s) No. 1
MR. J.K.SHAH, APP for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE M. R. MENGDEY

Date : 30/07/2026

ORDER

1. By filing the present Petition under Articles 226 and 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Petitioner has prayed for quashing of the FIR being Part II C.R. No. 3152 of 2014 registered with Vejalpur Police Station, Ahmedabad City for the offence punishable under Section 188 of the Indian Penal Code on 5.05.2014.
2. Heard learned Advocate Mr. A.S.Timbalia appearing for the Petitioner and learned APP for the Respondent – State.
3. Rule. Learned APP waives service of Rule on behalf of the Respondent – State.
4. The facts giving rise to the filing of the present Petition are such that a complaint came to be lodged against the Petitioner for an offence punishable under Section 188 of the Indian Penal Code. The case of the prosecution in the FIR is such that the Petitioner herein was having no permission for running his ice cream shop up to late night.

5. Learned Advocate appearing for the Petitioner submitted that the FIR in question was registered in the year 2014 and for a considerable long time no charge sheet has been filed. The Petitioner had also preferred an RTI Application and sought for an information from Vejalpur Police Station regarding filing of the charge sheet. Since no action was taken on the said RTI Application, the Petitioner then, by way of RTI sought information from the concerned trial court having jurisdiction regarding filing of the charge sheet. However, after running from pillar to post the Petitioner had ultimately preferred Special Criminal Application No. 7082 of 2025 seeking direction to confess the offence which came to be withdrawn vide order dated 23.06.2026. However, a liberty was granted to the Petitioner to file appropriate application before the appropriate forum.

5.1 The Petitioner being aggrieved and dissatisfied by the registration of the FIR in the year 2014 and thereafter not filing of charge sheet till date, has approached this court for quashing the FIR as aforesaid.

6. Learned Advocate appearing for the Petitioner submitted that the bar on prosecuting an FIR under Section 188 of the Indian Penal Code stems from Section 195 of the Code of Criminal Procedure.

7. Learned APP has opposed the Petition.

8. Heard learned Advocates for the parties. It is an admitted fact the FIR in question came to be registered in the year 2014 and no charge sheet came to be filed till date. No satisfactory explanation has been placed on record by the investigation agency for such an inordinate delay.

9. Section 195(1) of the Code of Criminal Procedure reads as under:

“(1) No Court shall take cognizance –

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860);

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]”

9.1 Accordingly as per the aforesaid Section, there is a statutory bar on the court taking cognizance of an offence punishable under Section 188 of the IPC.

10. The Apex Court in case of Robert Lalchungnunga Chongthu @ RL Chongthu v. State of Bihar reported in 2025 INSC 1339 has observed that the investigation cannot be permitted to remain pending indefinitely.

11. In view of the aforesaid factual scenario, the continued pendency of the investigation for an inordinate long period, without culmination in the filing the charge sheet, coupled with the statutory embargo contained in Section 195(1)(a)(i) of the Code of Criminal Procedure in so far as the offence under Section 188 IPC is concerned amounts to an abuse of process of law.

12. The present Petition therefore deserves consideration and is therefore allowed. The FIR in question is hereby quashed and set aside. Rule is made absolute.

(M. R. MENGDEY,J)