

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION) NO. 381
of 2016**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
	✓	
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ARVINDBHAI KALYANBHAI VANALIYA

Versus

STATE OF GUJARAT

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Appearance:

MR. TEJAS M. BAROT, SR. ADV. ASSISTED BY RHEA CHOKSHI, FOR

MR. ASHOK A PUROHIT(6267) for the Applicant(s) No. 1

MR. HARDIK DAVE, PUBLIC PROSECUTOR Assisted by KANVA ANTANI,
APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 20/02/2026

JUDGMENT

- The present revision application is preferred by the revisionist-applicant under Section 397 read with Section 401 of the Code of Criminal Procedure (for short "Cr.PC) being dissatisfied by the impugned judgment and order dated 21.5.2016 passed by the learned 3rd Additional Sessions Judge (hereinafter referred to as 'the appellate Court') in Criminal Appeal No. 63 of 2015 which, *inter alia*, dismissed

the appeal and confirmed the judgment and order passed by the learned Adhoc Judicial Magistrate, Gadhada (hereinafter referred to as 'the trial Court') dated 7.9.2015 in Criminal Case No. 5 of 2010 wherein the learned trial Court was pleased to convict the revisionist-applicant for the offence under Section 323 of the Indian Penal Code (for short "IPC") for a period of one month imprisonment and was further pleased to convict the present revisionist-applicant under Section 186 of the IPC for simple imprisonment for a period of 15 days.

2. The brief facts leading to filing of the present revision application is that it was the case of the prosecution that the complainant who was serving as a Deputy Engineer in Paschim Gujarat Vij Company Ltd. (for short 'PGVCL') was present along with other staff people i.e. N.K. Bhigradiya, Mr. J.J. Parmar and another officer Engineer R.M. Bavariya near the office of PGVCL. On the same day i.e. 9.10.2009 at around 11.00 a.m. in the morning when

the complainant was standing near the office of PGVCL, the revisionist-applicant and other persons came and asked the complainant with regard to their electricity connection. It was alleged that the complainant replied that the bill of the revisionist-applicant and other people would be ready by one day and thereafter they will have to pay the bill. Getting angry by the response of the complainant, the revisionist-applicant along with other persons, abused the complainant and it was further alleged that the revisionist-applicant attacked the complainant. Due to sudden attack of the revisionist-applicant, other people standing near the revisionist-applicant, Mr. N.K. Bhingaradiya and Mr. J.J. Parmar intervened. On such intervention, the group also assaulted Mr. Bhingaradiya and Mr. Parmar. It was, therefore, alleged that the group had attacked the complainant and other Officers and had restrained them from doing their official duty. In wake of such information a First Information Report came to be

registered before Gadhada Police Station alleging that the revisionist-applicant had committed offence under Section 323, 504, 506(2), 114 and 186 of the Indian Penal Code.

3. On registration of the First Information Report and completion of the investigation, charge-sheet came to be filed. Charges came to be framed. Criminal Case came to be numbered as Criminal Case No. 5 of 2010. The trial Court considering the documentary and oral evidence, was pleased to convict the revisionist-applicant for the offence under Section 323 of the IPC for one month simple imprisonment and was further pleased to convict the present revisionist applicant under Section 186 of the IPC for simple imprisonment for a period of 15 days. Revisionist applicant was acquitted for charges under Section 504 and 506 of the Indian Penal Code. Other accused were acquitted qua all the charges.

4. Being aggrieved by the judgment and order dated 7.9.2015 passed in Criminal Case No. 5 of 2010 by the learned trial Court, the revisionist -applicant preferred an appeal before the learned appellate Court being Criminal Appeal No.63 of 2015. The learned appellate Court by way of judgment and order dated 21.5.2016 was pleased to dismiss the appeal and confirmed the judgment and order dated 7.9.2015 passed by the learned trial Court.
5. Heard Mr. Tejas M. Barot, learned Senior Counsel assisted by Ms. Rhea Chokshi, learned advocate for Mr. Ashok Purohit, learned advocate for the revisionist-applicant and Mr. Hardik Dave, learned Public Prosecutor assisted by Mr. Kanva Antani, learned Additional Public Prosecutor for the State-respondent.
6. It was submitted by Mr. Tejas Barot, learned Senior Counsel that the learned trial Court as well as learned appellate Court has convicted only the

present revisionist-applicant and all the other accused were acquitted by the learned trial Court. It was further submitted that the learned trial Court has observed that the complainant has failed to establish his case regarding Section 504 and 506(2) of the IPC. It was further submitted that as per prosecution witness No.8, the allegation of throttling the neck by the applicant are baseless. It was further submitted that the Investigating Officer was not examined. Regarding the provisions of Sections 319 and 323 of the IPC, it was sought to be submitted by Mr. Tejas Barot, learned Senior Counsel that there has been categorical finding by the learned trial Court that there is no injury. Once there is no injury, the provisions of Section 319 of the IPC with regard to 'hurt' would not be established. Therefore, if there is no 'hurt' to the victim, then the provisions of Section 323 would be baseless.

7. The second realm of argument of Mr. Tejas Barot, learned Senior Counsel is that the learned trial

Court could not have taken cognizance for offence punishable under Section 186 of the IPC. There is a categorical bar of Section 195 of the Cr.PC. Therefore, if the conditions as prescribed under Section 195 of the Cr.PC is not satisfied then the learned trial Court was not capable of taking cognizance of offence under Section 186 of the Indian Penal Code. For the same, he has relied on the judgment in the case of Mohmadmohsin Mohmadirfan Chhalotiya v. State of Gujarat, reported in 2019 (0) AIJEL-HC-240212. Further, reliance was placed on order passed by the Coordinate Bench in case of Rajendra Nilkanthbhai Mishra v. State of Gujarat and 1 in Criminal Misc. Application No. 20216 of 2015 with regard to the cognizance for offence punishable under Section 186 of the Indian Penal Code.

8. Per contra, Mr. Hardik Dave, learned Public Prosecutor has supported the observation made by the trial Court as well as the appellate Court. He has

further submitted that the observation made by the Courts below are just and proper and should not be interfered with. However, Mr. Dave was not in a position to dispute two aspects. The first one is with regard to mandatory requirement as envisaged under Section 195 of the Cr.P.C. with regard to written complaint by a public servant. The second one was with regard to the absence of any bodily pain to the victim. It has been categorically accepted by Mr. Dave that neither the record nor the observation made by the Courts below indicate that any voluntary or non-voluntary bodily pain is caused to the victim.

9. In view of the submissions made by both the parties, deliberation is required for both the aspects i.e. invokement of Section 186 as well as Section 323 of the Indian Penal Code. The first should be with regard to invokement of Section 186 of IPC. To understand the controversy in question the provisions of Section 186 of the IPC and Section 195

of the Cr.PC are required to be understood, which are reproduced as under:

Section 186. - *Obstructing public servant in discharge of public functions.- Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.*

Section 195. *Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.*

(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), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[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.]

[Substituted by Act 2 of 2006, Section 3 for "except on the complaint in writing of that Court, of of some other Court to which that Court is subordinate" (w.e.f. 16-4-2006).]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint :

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court and includes a Tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinarily original civil jurisdiction within whose local jurisdiction such Civil Court is situate :

Provided that -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

[195-A. Procedure for witnesses in case of threatening, etc. - A witness or any other person may file complaint in relation

to an offence under Section 195-A of the Indian Penal Code (45 of 1860).] [Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 17.]

10. In the instant case, it is an admitted position of fact that the First Information Report was filed by the complainant alleging offence under Section 186 of the Indian Penal Code. A Statutory bar is created under Section 195(1)(a) of the CrPC. It operates to take cognizance of the offence, except the complaint has to be filed in writing by the public servant concerned. The First Information Report for the alleged offence under Section 186 of the Indian Penal Code culminated into charge-sheet.
11. Subsequent to the charge-sheet, the trial Court has taken cognizance of offence under Section 186 of the IPC and concluded the trial despite the fact that allegations are not made in writing to Magistrate. It would be a fatal exercise as the Court would not be empowered to take cognizance of the same as the allegations are not made orally or in writing to a Magistrate. The core question, therefore, would be

whether trial would be vitiated and a complaint in writing as required by Section 195 would be mandatory for offence against public servant. In the instant case, prosecution is launched and the revisionist-applicant is found guilty of the offence and his appeal has also failed. Therefore, when mandatory requirement as envisaged under Section 195 of Cr.PC is not followed such action would vitiate the trial proceedings, is the moot question over here. It is not in dispute that for framing offence under Section 186, written complaint as prerequisite by Section 195 is not preferred. It is settled law that if a prosecution has to be launched against the public servant then a complaint in writing, as required by Section 195 of Cr.PC is mandatory. If such mandatory requirement is not complied with, then the trial would be without jurisdiction and the conviction would not be maintained. Categorical observations are made by Hon'ble Apex Court in case of *Daulat Ram v. The*

State of Punjab, reported in 1962 Supp(2) SCR 812

in this regard. Relevant part is reproduced as under:

"The only question in this case is whether a complaint in writing as required by s. 195 had been presented by the public servant concerned. The public servant who was moved by the appellant was undoubtedly the Tehsildar. Whether the appellant wanted the Tehsildar to take action or not, the fact remains that he moved the Tehsildar on what is stated to be a false averment of facts. He had charged Hans Raj and Kans Raj with offences under the Penal Code and he had moved his superior officer for action even though he might have stated in the letter that it was only for his information. We are prepared to assume that he expected that some action would be taken. In fact his second letter that he had compromised the matter and the proceedings might be dropped clearly shows that he anticipated some action on the part of his superior officer. The question is therefore whether under the provisions of Section 195, it was not incumbent on the Tehsildar to present a complaint in writing against the appellant and not leave the court to be moved by the police by putting in a charge sheet. The words of Section 195 of the Criminal Procedure Code are explicit. The section reads as follows:

"(1) No Court shall take cognizance-(a) of any offence punishable under [sections 172 to 188](#) of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of [s. 195](#). The words "no court shall take cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except in the

manner provided by the section.

*Now the offence under s. 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that Section 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar". This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of Section 195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. **The trial was thus without jurisdiction ab initio and the conviction cannot be maintained. The appeal is therefore allowed and the conviction of the appellant and the sentence passed on him are set aside. Appeal allowed.***

12. Therefore, the conviction under Section 186 of the Indian Penal Code without taking into account such factors would not be permissible. In the instant case, the trial Court has concluded the trial despite lacuna

of non-fulfillment of pre-requisite under Section 195 of the Code. This aspect alone would vitiate the trial and conviction of the revisionist qua Section 186 of the IPC cannot be maintained. Therefore, the conviction qua Section 186 of the IPC is required to be quashed and set-aside and is hereby quashed and set-aside.

13. The second aspect of the matter is with regard to conviction as per Section 323 of the IPC. The fact is not in dispute that an attempt was made by the revisionist to cause bodily pain to the victim. However, two factual aspects are very vital. The first one is that to cause bodily pain, a bottle has been thrown by the revisionist on the victim. However, the bottle missed the mark and no injury was caused to the victim. This aspect is demonstrated by eye-witnesses. The other accused who had caught hold of the victim are already acquitted by the Courts below. The second aspect is that there is absence of any medical certificate to show-cause any bodily

pain or injury caused to the victim. The Courts below have convicted the revisionist on the premise that an attempt was made by the revisionist to cause 'hurt' to the victim. In this context, Section 323 and Section 319 of the IPC need to be perused:

"323. Punishment for voluntarily causing hurt.—

*Whoever, except in the case provided for by section 334, voluntarily causes **hurt**, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."*

"Section 319 Hurt.—

*Whoever **causes bodily pain, disease or infirmity** to any person is said to cause hurt."*

14. Looking to the provision of Section 323 of the IPC, the main ingredient to attract the provision is 'hurt'. 'hurt' is defined in Section 319. Section 319 of the IPC refers to 'hurt' as causing 'bodily pain', 'disease' or 'infirmity'. Section 319 of the IPC does not refer to intention to cause bodily pain. Section 319 of the IPC also does not refer to the aspect of any mental or emotional distress caused due to attempt being made for causing bodily pain. Therefore, to attract

the provision of Section 319 as well as Section 323 of the IPC, there has to be presence of any bodily pain which may or may not result into an injury. In the instance case, there is nothing on record to show that revisionist has engaged in an act which resulted in bodily pain to the victim. The Trial Court and Appellate Court has gone on to premise that when an attempt was made to make injury to the victim and it has failed, it has cause mental distress to the victim and, therefore, Section 323 would be attracted. Unfortunately, such interpretation cannot be accepted. There has to be the presence of bodily pain caused to the victim. It may be minimal in nature which may not cause any injury but presence of any bodily pain has to be there. The conclusion that mental agony has been caused due to an attempt being made by the revisionist and that would attract provision of Sections 319 and 323 cannot be countenanced. The definition of 'hurt' contemplates the causing of pain. Mental agony or

harassment due to unsuccessful attempt to cause bodily pain would not culminate in definition of 'hurt' as envisaged in Section 319 of the IPC. Therefore, the observations made by learned trial Court for conviction of the revisionist under Section 323 of the IPC are de hors the provision of law and are required to be quashed and set-aside.

15. Therefore, the order of conviction of the revisionist under Section 323 of the IPC confirmed by the appellate Court is required to be quashed and is hereby quashed and set-aside. The revisionist is acquitted for the offence under Section 186 as well as Section 323 of the IPC for the reasons mentioned hereinabove. The present Criminal Revision Application succeeds. Rule is made absolute accordingly.

SAJ GEORGE

(PRANAV TRIVEDI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SAJ PULICKAL GEORGE(HC01069), PRIVATE SECRETARY, at High Court of Gujarat on 07/03/2026 18:17:53