

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 10412 of 2021**

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HITESHSINH BHAGVATSINH ZALA

Versus

STATE OF GUJARAT

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Appearance:

MR. RAHUL R DHOLAKIA(6765) for the Applicant(s) No. 1,2,3,4,5,6
for the Respondent(s) No. 2

PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 25/10/2021****ORAL ORDER**

Heard Mr. Yogesh Lakhani, learned Senior Counsel assisted by Mr. Rahul R. Dholakia, learned counsel for the Petitioners.

2. By way of this petition, the Petitioners have prayed for quashing of the impugned order dated 05.10.2021 passed in Criminal Inquiry Case No.67/2021 by JMFC, Court No.2, Surat, whereby, the Court has issued summons in terms of Section 204 of the Code of Criminal Procedure.

3. The petitioners are police officers serving at Limbayat Police Station, Surat. Respondent No.2 being accused of FIR registered with Limbayat Police Station for the offence punishable under Sections 323, 294(b) and 506(2) of IPC produced before the Court of learned 2nd JMFC, Surat and on being asked by the Court about ill-treatment, respondent No.2 made a complaint about ill-treatment and causing injuries against the petitioners. The learned trial Court hold an inquiry and after considering documentary evidence as referred in the impugned order, vide order dated 05.10.2021 issued process under Section 34, 166A and 323 of Indian Penal Code.

Aggrieved with the impugned order, the petitioners have come up before this Court with the present petition.

4. Learned Senior Counsel would submit that, the trial Court has erred in taking cognizance of the offences as alleged against the present petitioners without prior sanction as contemplated under Section 197 of the Criminal Procedure Code. Learned Senior Counsel appearing for the petitioners has placed strong reliance on the case of **D. Devraja Vs. Owais Sabeer Hussain [2020 (7) SCC 695]**, to submit that, when the act is one which is done in exercise of official duty or even a purported exercise of duty, the officers are under the protective umbrella of Section 197 of the Code. Learned Senior Counsel would further submit that, trial Court has erred in applying Section 166A of the IPC, which in fact, is not applicable to the facts of the present case.

5. In view of the above, this Court is of considered view that the matter deserves consideration. Let **Notice** be issued, returnable on **29.10.2021**. Learned APP waives Notice for the respondent State.

(ILESH J. VORA,J)

SUCHIT