

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 626 of 2007****With****R/CRIMINAL REVISION APPLICATION NO. 603 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Approved for Reporting	Yes	No

STATE OF GUJARAT

Versus

JITENDRAKUMAR DHULABHAI PATEL & ORS.

Appearance:

MR ROHAN RAVAL, APP for the Applicant(s) No. 1

HL PATEL ADVOCATES(2034) for the Respondent(s) No. 8

MR MA KHARADI(1032) for the Respondent(s) No. 1

MR. ALTAF Y CHARKHA(7271) for the Respondent(s) No. 3,4,6,7

MS. PAURAMI B. SHETH(841) for the Respondent(s) No. 2

RULE SERVED BY DS for the Respondent(s) No. 5

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 04/05/2026****COMMON JUDGMENT**

- 1) In Criminal Revision Application No. 626/2007, the applicant – State of Gujarat and in Criminal Revision Application No. 626/2007, the applicant – complainant, both have filed present revision applications under Sections 397 read with 401 of the Code of Criminal Procedure, 1973 and have prayed for quashing and setting aside the order dated 29.08.2007 passed by learned Additional Sessions Judge, Godhra, passed below Exh:16 in Sessions Case No.86/2007, whereby, learned Sessions Judge has been pleased to reject the application filed under

Section 173(8) of Cr.P.C for further investigation came to be rejected and thereby, be pleased to direct the Investigating Agency to make further investigation in this case.

- 2) As both the revision applications arising out of same incident, both were heard together and are hereby disposed of by this common judgment.
- 3) Heard learned counsel for the respective parties.
- 4) It is the case of the original complainant that the complainant – revisionist has lodged FIR being I-C.R. No.56/2007 for the offence under Sections 292, 376, 406, 420, 228(A), 188, 120(B) and 201 of IPC, Section 67 of the Information Technology Act and Section 4 of the Indecent Presentation of Women (Prohibition) Act on 16.03.2007 for the incident occurred in October, 2006. After investigation, chargesheet came to be filed which was culminated into Sessions Case No. 86 /2007, which is pending for adjudication before the learned Sessions Court. In the said proceedings, the complainant had preferred an application under Section 173(8) of Cr.P.C for further investigation in the matter alleging that due to defective investigation and glaring discrepancies in the investigation, serious prejudice is caused to the complainant.
- 5) It is the case of the complainant that accused No. 1 recorded obscene

and vulgar video clippings of the complainant on his Nokia 6600 mobile phone. After capturing such material, the accused allegedly threatened the complainant and committed rape upon her. It is further alleged that the investigating officer recovered the mobile phone in the presence of panch witnesses; however, no verification was carried out to ascertain whether the video clips in the mobile phone and the CD were actually of the complainant. From the chargesheet, it appears that the investigating officer did not investigate this aspect at all. It is further the case of the complainant that accused No. 2 supplied the said nude clips to accused Nos. 3 and 4, and accused No. 4 voluntarily handed over a CD from his residence to the investigating officer. However, the investigating officer failed to verify whether the CD and its contents actually pertained to the complainant, and such verification was not conducted in the presence of panch witnesses. Further, respondent No. 5, who runs a computer shop at Kalol and allegedly prepared the CD, voluntarily handed it over in the presence of panch witnesses. The investigating officer took custody of the said CD but again failed to verify its contents in their presence. It is also the complainant's case that respondent No. 5 provided CDs containing obscene photographs and video clips to the friends of accused No. 2, namely respondent Nos. 6, 7, and 8, who in turn voluntarily handed over the CDs to the investigating officer in the presence of panch witnesses. These CDs were seized under separate panchnamas. However, no verification was conducted to

confirm whether the seized CDs actually contained the alleged obscene material of the complainant. It is further alleged that respondent No. 9, a reporter with the daily newspaper *Gujarati Samachar*, voluntarily handed over a CD to the investigating officer, which was found to contain nude photographs and objectionable material of the complainant. A panchnama to that effect was drawn. However, no investigation was conducted to ascertain whether such material was published in the newspaper or to identify the person who supplied such material for publication. Further investigation is therefore sought on these aspects. It is also alleged that no investigation whatsoever was carried out under Section 67 of the Information Technology Act. Although the chargesheet has been filed under Section 4 of the Indecent Representation of Women (Prohibition) Act, no proper investigation was conducted regarding the auditor or publisher of the news item, nor was the statement of the website manager recorded, which is essential to establish the said offence. It is further alleged that relevant electronic evidence, including data from the mobile phone and CDs (including deleted data), was not properly examined. In such facts of the case, it is contended that present revision applications may be allowed as prayed for.

- 6) The present applications have been opposed by the accused parties mainly on the ground that, upon completion of the investigation, the

chargesheet has already been filed and the muddamal is required to be handed over to the complainant. It is contended that if the same is returned, it may prejudice the case of the accused, and the possibility of tampering cannot be ruled out. It is further submitted that no specific direction or justification has been provided as to why further investigation is necessary. It is also argued that the CD in question has already been seized and sent to the FSL, and a mere technical glitch cannot be a ground for ordering further investigation, which at best may amount to a defective investigation. However, the fact remains that the CD has been recovered and duly forwarded to the FSL. Upon perusal of the FSL dispatch note, it appears that the FSL receipt is produced at Mark 12/24, and along with the FSL report in a sealed cover, photographs of the complainant have also been sent to the FSL. In light of the above, the learned counsel for the respondents has prayed for dismissal of the revision applications.

- 7) Upon consideration of the aforesaid facts, the alleged incident occurred in the year 2007. The chargesheet has already been filed, and thereafter the present application came to be preferred by the complainant. It is noted that the FSL report has now been received. The objectionable material and photographs, which are alleged to be either of the complainant or resembling the complainant and/or the accused, were sent to the FSL under Mark No. KLM, whereas the Nokia mobile phone recovered from the accused was forwarded under Mark A-H. With regard to Articles A-H, including the CDs and

photographs, queries were raised before the FSL as to whether such data was present in the memory of the device and whether the contents in the CDs were available therein. The learned APP has submitted that the FSL report in this regard has now been received.

- 8) In view of the above, since the FSL report concerning the alleged obscene material has already been received, this Court is of the considered opinion that no error has been committed by the learned Sessions Judge. This is particularly in light of the fact that the CDs, objectionable material, and primary electronic evidence, including the Nokia mobile phone and memory card, were duly sent to the FSL for examination. The mere fact that, at the time of drawing the panchnama, the CDs were not shown to the panch witnesses cannot be a ground for directing further investigation, especially when such a course may further defame the victim. The learned Sessions Judge has rightly observed that it remains open for the complainant to lead further evidence, including the examination of the FSL officer, who is cited as a witness. Considering that the evidence in question is largely electronic and volatile in nature, and that the request for drawing a panchnama or further verification has been made after a considerable lapse of time nearly 19 years, no useful purpose would be served by ordering further investigation at this belated stage, particularly when the FSL report is already on record. In view of the volatile nature of electronic data and the fact that the primary evidence has already been examined by the FSL and a report has been received, this Court

finds that the learned Sessions Judge has not committed any error in rejecting the application for further investigation.

- 9) Even otherwise, this Court is of the considered view that, having regard to the nature of the alleged offence and the scope of further investigation as sought for, the relevant data is electronic and volatile in nature. Since the alleged offence took place in October 2006, the possibility of recovering or collecting such material at this stage is minimal, and the sanctity and reliability of any such evidence would be highly questionable. In view of the efflux of time, no fruitful purpose would be served by permitting further investigation. On this ground as well, the application does not merit consideration.
- 10) In this regard, reference may be made to the decision in ***K. Vadivel v. K. Shanthi & Ors., reported in (2024) INSC 746***, wherein it has been held that further investigation cannot be permitted to conduct a roving or fishing inquiry once the police has already filed the chargesheet. There must exist cogent and justifiable reasons for entertaining an application for further investigation, which must be assessed in light of the peculiar facts and attendant circumstances of each case. The object of further investigation is ultimately to arrive at the truth; however, in the present case, no such ground emerges from the record warranting such a course. The matter pertains to an incident alleged to have occurred in October 2006, and the case has been pending since 2007. Society at large has a legitimate expectation that justice will be delivered within a reasonable time. It

is beyond cavil that a speedy trial is an essential facet of the rule of law. However, advertent to the submissions of the learned counsel for the complainant, Mr. Mangukiya has mainly contended that although the chargesheet has been filed under Section 4 of the Indecent Representation of Women (Prohibition) Act and Section 67 of the Information Technology Act, certain aspects remain uninvestigated. It is submitted that though accused No.8 (respondent No. 9 herein), a press reporter of a well-known daily newspaper, has been arraigned as an accused, the publisher and other concerned persons have not been joined as accused, nor have their statements been recorded. A perusal of Section 4 of the Indecent Representation of Women (Prohibition) Act reveals that it prohibits the publication, sale, distribution, or circulation of any material—such as books, pamphlets, papers, slides, films, writings, drawings, paintings, photographs, or figures containing indecent representation of women. In the present case, as per the allegations, the concerned reporter has already been arraigned as an accused. Nevertheless, the complainant is at liberty to avail appropriate legal remedies for ventilating her grievance, including filing an application under Section 311 of the Code of Criminal Procedure or under Section 319 of the Code of Criminal Procedure, as may be advised. In the event such applications are filed, or if relevant material comes during the course of evidence, the learned Sessions Judge shall decide the same independently on its own merits, without being influenced by any

observations made in this order

- 11) For the foregoing reasons, no case is made out to pass any order for further investigation and that too after a span of 19 years. Accordingly, both revision applications are **dismissed**. Interim relief, if any, stands vacated. Record and proceedings be sent back to the concerned trial court.

(HASMUKH D. SUTHAR,J)

SUCHIT