

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 619 of 2024**

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RAMESHCHANDRA LAHERCHAND SHAH & ORS.
Versus
STATE OF GUJARAT

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Appearance:

MR I H SAIYED SENIOR COUNSEL WITH MS ZEAL H SHAH(9811) for the
Applicant(s) No. 1,2,3,4,5,6

MR HK PATEL APP for the Respondent(s) No. 1

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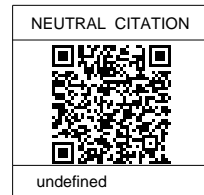
CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 06/05/2024

CAV ORDER

Order dated 18/04/2024 passed by the learned 7th JMFC, Navrangpura, Ahmedabad (Rural) below Exh.203 in Criminal Case No.3135 of 2006 seeking to provide copy of charge-sheet papers is sought to be challenged in this revision under Section 397 read with Section 401 of the Code of Criminal Procedure.

2. The short facts of the case are that an FIR being I-C.R. No.270 of 2002 for the offences punishable under Sections 406, 420, 465, 468 and 114 of the Indian Penal Code came to be registered before Sarkhej Police Station alleging inter alia that accused persons named in the FIR had taken the loan in the name of the employees working in the bank for the purpose of construction of one scheme viz., Speedwell Property, as also availed the overdraft facility after preparing an applications in the name of employees working in the bank and in the name of the relatives of the employees and knowing fully well that for

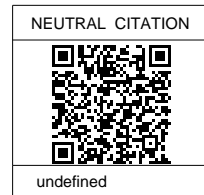


obtaining the loans the papers are insufficient the loans were sanctioned on the basis of fraudulent documents and thus committed cheating with the bank.

2.1 Upon registration of FIR, investigation was conducted, charge-sheet came to be filed and case was registered being Criminal Case No.3135 of 2006 wherein present petitioner filed the application seeking charge-sheet papers and learned Court below after hearing both the sides rejected the said application which has given rise to the present revision application.

3. Heard learned advocates appearing for the respective parties.

4. Learned Senior Advocate Mr.I H Saiyed with Ms.Zeal Shah for the petitioners, after referring the decision in case of ***Criminal Trials Guidelines Regarding Inadequacies And Deficiencies, In Re Versus State Of Andhra Pradesh And Others [(2021) 10 Supreme Court Cases 598]***, more particularly, paragraph 11 would submit that the Court while granting the investigation papers should also ensure that the list of other materials such as statement, documents, since but not relied upon should be furnished to the accused. In the present case, the petitioner has not been supplied with the documents he has demanded. In the charge-sheet papers, some of the papers which are not relied upon by the prosecution has not been supplied to the petitioner and in view of that, material right of the present petitioner is prejudiced and therefore learned Senior Counsel Mr.Saiyed would submit to allow this revision.



4.1 Learned Senior Counsel Mr.Saiyed for the petitioner would rely upon the two other orders passed by the co-ordinate Bench of this Court in SCR.A No.1060 of 2023 dated 02/02/2023 and CR.RA No.328 of 2023 dated 24/03/2024. He would further submit that in order to satisfy the existence of the prima facie case and material against petitioner, this Court may call for the R & P of the criminal case.

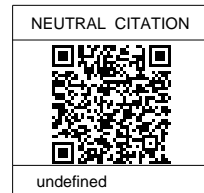
4.2 Upon above submissions, learned Senior Counsel Mr.Saiyed would submit to allow this revision and to grant relief as claimed in the revision.

5. On the other hand, learned APP while drawing attention of this Court to the impugned order would submit that learned trial Court has categorically noted that petitioner has been given charge-sheet papers and only thereafter the charge was framed on 05/03/2008 and thus the present application is bereft of merits, as also moved to prolong trial and thus learned trial Court has rightly dismissed the said application. He would submit that this Court may not interfere with the impugned order which is just, legal and proper.

6. Having heard learned advocates appearing for the respective parties, at the outset, let refer to the application with prayers made therein at Exh.203 preferred by the petitioner which reads as under:

“1. The undersigned advocate for the Applicant-Accused respectfully submits hereunder that-

2. The captioned criminal case is pending before this Hon'ble



Court and is at the stage of the Evidence of Prosecution. It is submitted that the applicant-accused persons have not been provided with the chargesheet papers in the matter.

3. It is submitted that the applicant-accused has learnt that the said copies were supplied to A-3, A-4, A-8 and A-9 and also tried to obtain the charge sheet papers from the said accused persons however the said accused persons are not able to trace the chargesheet papers as they have given it to their advocate at the relevant time. It is further submitted that when the applicant-accused appointed the undersigned advocate to appear for them in the matter, as they were not having any papers, an application to obtain certified copy of the entire record of the case was made in 2019, however the chargesheet papers were not received in the same as well.

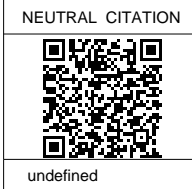
4. The applicant-accused further submits that the complainant bank has filed an application before the Hon'ble High Court of Gujarat for cancellation of anticipatory bail granted to the accused persons by way of ling CRMA 1/2022 in CRRA 702/2014 and the Hon'ble High Court of Gujarat has passed an order dated 26.03.2024 to hear and decide the present criminal case as early as possible, preferably, on day-to-day basis, therefore it is requested that the said copies may be provided to the applicant-accused as early as possible so as to enable them to proceed with the matter.

5. The present application under Section 207 of the Cr.P.C. is sought to be made subject to the rights and contentions of the Applicant-Accused to prefer any further application under Section 207 of the Cr.P.C. as may be permitted under law or any other appropriate application upon receipt and perusal of the documents so received.

Prayers:

6. In lieu of aforesaid facts and circumstances the applicant prays that-
a. The applicants be given copies of the charge-sheet papers,
b. And to pass any other and further order(s) as may be deemed fit and proper.”

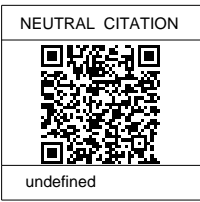
7. The learned trial Court, after recording facts of the application noted charge was framed at Exh.16 on 05/03/2008 whereupon plea of the accused is recorded and in reply to the question as to whether copies of the police papers are received or



not; answer is given in affirmative by the accused and thus by holding that as the accused was supplied the police papers at the time of framing of the charge in the year 2008, application filed after a period of 15 years, at the stage of recording of evidence, cannot be allowed and thereby rejected the application of the accused.

8. Apt to note that in the prayer clause, the petitioner has made prayer to supply the charge-sheet papers. However, the learned trial Court has categorically noted in the impugned order that charge-sheet papers are given to the accused. Charge is also framed at Exh.16 on 05/03/2008 and the plea of the accused are also recorded. The question was asked while recording the plea as to whether they have received the copies of police papers are not; answer is recorded in affirmative. It would unquestionably establish that charge-sheet papers are supplied to accused 15 years ago. Thus, it appears that on one hand before the learned Court below the petitioner has clearly made admission of receipt of police papers and on other hand by making such application, the petitioner would try to stall the proceedings of the criminal case of the year 2006 which could not be started even after passage of 15 years. This is one more attempt on the part of the petitioner to protract the trial for indefinite period.

9. Insofar as the judgement in case of ***Criminal Trials Guidelines Regarding Inadequacies And Deficiencies, In Re (supra)*** is concerned, ratio therein would not help the petitioners as all the charge-sheet papers has been supplied to the petitioner in the year 2008 and for 15 years he did not question

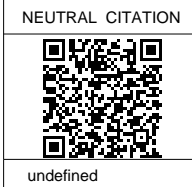


about non-receipt of police papers and thus this Court does not find any substance in the argument of the petitioner. The other two oral orders upon which reliance is placed by learned Senior Counsel Mr.Saiyed wherein this Court has merely issued the notice. How such an order/s would helpful to the case of the petitioner is not borne out from the submissions of the petitioner.

10. To be noted further that, impugned order is passed by the learned 7th JMFC, Navrangpura, Ahmedabad (Rural) against which ordinarily the revision lies before the learned Sessions Court and instead of approaching the Sessions Court, the petitioner has directly approached this Court. Indeed, under Section 397 read with Section 401 of the Cr.PC, this Court has concurrent jurisdiction to try and decide the revision; albeit the petitioner is to make out the special circumstances to avail such remedy. No such special circumstances has been shown by learned Senior Counsel for the petitioner.

11. Recently, this Court in *Manishaben Vrajlal Thakkar vs State Of Gujarat & Ors.*, in CR.RA No.10 of 2024, after referring the judgment of Bombay High Court as well as Kerala High Court has observed in paragraph 15 to 17 as under:

*“15. What could be further noticed that impugned order is passed by learned Magistrate. Aggrieved by such impugned order, revision can be filed in Sessions Court, however, the complainant - the first informant has directly approached this Court bypassing the Sessions Court to challenge the impugned order. Of course, Section 397 of the Code provides for the concurrent jurisdiction to the Sessions Court as well as the High Court to examine correctness, legality or propriety of any finding. In case of **Shri Padmanabh Keshav Kamat vs Shri Anup R. Kantak & Others reported in 1998(5)BOMCR 546** and in case of **Tejram S/O. Mahadeorao Gaikwad vs Smt. Sunanda W/O Tejram***



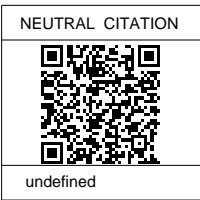
Gaikwad And reported in 1996 CRILJ 172 it has been held that when two forums are available to correct alleged wrong then it will be appropriate to approach lower forum. Recently, the Hon'ble Rajasthan High Court in case of ***Natwar Lal vs. State [2008 (3) RajLW 2522]*** after referring to the decision of Hon'ble Apex Court in case of ***Pranab Kumar Mitra vs State of West Bengal AIR 1959 SC 144*** held in paragraph 14 thus:

“The scope and ambit of Section 397 of the code is not only confined to the correctness or legality of the order but also to its propriety.

Both the Court of Sessions and Magistrate are inferior to the High Court and courts of Judicial Magistrate are inferior to the Court of Sessions Judge When an order is passed by the Sessions Judge the only remedy left with the aggrieved party is to approach the High Court under 5.397 (1) of the Code to question correctness, legality or propriety but when the same is passed by a magistrate, though power lies to both the sessions and the High Court but as a matter of prudence and propriety, it will be appropriate to first approach the lower forum except in rare and special circumstances. Such special circumstances may be where the Sessions Judge has directly or indirectly participated in the enquiry or investigation or trial or through his any action or order interest of justice demands that High Court alone should interfere in the order of the magistrate.”

16. Recently, the Kerala High Court in CR.RA No.839 of 2023 in case of ***Balamuraly G. vs. Vinod T R*** vide order dated 26/10/2023, in similar such facts has held in paragraph 6 thus:

*“6. True, section 397 of the Code confers concurrent jurisdiction to the High Court as well as the Sessions Court to call for and examine the records of any proceedings before an inferior criminal court situated within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order rendered in such proceedings. When the power of revision is concurrent, it may not be illegal for a person to approach the High Court instead of the Sessions Court with a prayer for revision of an order. A Full Bench of this Court considered in ***Sivan Pillai v.Rajamohan and others [1978 KLT 223]*** the question whether a revision, where it is maintainable in view of the provisions of Section 397(1) of the Code, in the High Court as well as Sessions Court, should be pinned down to the Sessions Court. The view taken by the majority is that the salutary principle that where concurrent jurisdiction is conferred on two fora, the lower forum should be exhausted first has to be given a go by in view of the specific provision conferring jurisdiction by Section 397(1) of the Code both on the High Court and the Sessions Courts. That is the law. But propriety demands the*



aggrieved, as far as possible, to first invoke the jurisdiction of the Sessions Court. It is apposite to approach the Sessions Court first for another reason also. That, the parties might be located in the Sessions Division concerned. In a revision petition any order, which causes prejudice to the accused, can be passed, in view of Section 401(2) of the Code, only after giving notice to him. Where the accused resides in a far away Sessions Division he has to be drawn to the High Court as though the matter can be heard and decided by the Sessions Court concerned without causing such an inconvenience. Therefore, it is just and appropriate for a party to invoke the jurisdiction of the Court of Sessions first, where the revision is possible by both the High Court and the Sessions Court, albeit there is no bar for the High Court to entertain the revision filed without exhaustion of the lower forum.”

12. From the record, it also appears that in CR.MA No.1 of 2022 in CR.MA No.702 of 20214 this Court on 26/03/2024 has directed the trial Court to decide the criminal case as early as possible, preferably, on day-to-day basis. Thus, it clearly transpires that application Exh.203 is made after passing of such order and thereby to delay the trial. This Court does not find any single reason to entertain this revision which is bereft of merits.

13. For the reasons recorded herein above, revision fails and is dismissed.

(J. C. DOSHI,J)

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