IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 14792 of 2024

With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2025
In R/SPECIAL CRIMINAL APPLICATION NO. 14792 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
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VANKAR RAMANBHAI SHIVRAMBHAI
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR VIVEK V BHAMARE(6710) for the Applicant(s) No. 1
MR KEVAL G BRAHMBHATT (BAROT)(9900) for the Respondent(s) No. 2,3
NOTICE SERVED for the Respondent(s) No. 4,5
MS.DHWANI TRIPATHI APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 03/11/2026

JUDGMENT

1. Heard learned counsel Mr. Vivek Bhamare appearing for the petitioner, learned counsel Mr.Keval Brahmbhatt for respondent Nos.2 and 3 and learned APP Ms.Dhwani Tripathi for the respondent – State.

2. With consent of learned counsels for the respective parties, the matter is taken up for final disposal.

3. Rule returnable forthwith. Learned APP and learned advocate Mr.Keval Brahmbhatt waive service of notice

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of rule for and on behalf of respective respondents.

4. The present petition is filed under Articles 226 and 227 of the Constitution of India, wherein the petitioner, being the original complainant/de facto complainant, has prayed for the following reliefs:

> *A. YOUR LORDSHIP may be pleased to admit the present petition;*
>
> *B. YOUR LORDSHIP may be issue writ of certiorari or any other appropriate writ by quashing as setting aside the order dated 06.07.202 passed by Ld. Sessions Judge under Exbt: 14 in Cri. Revision Application No. 17 of 2022 whereby Revision Application is rejected as well as seeks to challenge order Dated 11.04.2022 passed by Ld. Additional Judicial Magistrate First Class, Patan under Exbt 6 in criminal case no. 355 of 2021 rejecting application u/s 216 of C.R.P.C preferred by petitioner for addition of charge;*
>
> *C. Pending hearing and final disposal of the present petitioner YOUR LORDSHIPs be pleased to stay execution implementation and operation of order dated 06.07.2022 passed by Ld. Sessions Judge under Exbt: 14 in Cri. Revision Application No. 17 of 2022 whereby Revision Application is rejected as well as seeks to challenge order Dated 11.04.2022 passed by Ld. Additional Judicial Magistrate First Class, Patan under Exbt 6 in criminal case no. 355 of 2021 rejecting application u/s 216 of C.R.P.C preferred by petitioner for addition of charge;*
>
> *D. YOUR LORDSHIP may be issue direction to add the charge of section 92 of The Rights of Persons with Disabilities Act, 2016 in criminal case no. 355 of 2021 pending before Additional Judicial Magistrate First Class, Patan against the respondent no. 2 to 5;*
>
> *E. Any other and further reliefs, as may be deemed fit and proper by this Hon'ble Court, may kindly be granted, in the interest of justice;*

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5. Briefly stated, the facts of the case are that the petitioner, being the original complainant, lodged an FIR being C.R. No. II-98 of 2019 with Balisana Police Station, District Patan, for the offences punishable under Sections 504, 294(KH), 506(2) and 114 of the Indian Penal Code.

5.1 Upon completion of the investigation, charge-sheet came to be filed as on registration of Criminal Case No. 355 of 2021 against the accused and charge for the aforesaid offence is framed, petitioner rushed to prefer an application at Ex. 6 under Section 216 of the Code of Criminal Procedure, 1973 (for short “CrPC”), seeking addition of the charge for the offence punishable under Section 92 of the Rights of Persons with Disabilities Act, 2016 (for short " the Act, 2016").

5.2 The learned Trial Court, by order dated 11th April 2022, rejected the said application. The said order is placed on record at Annexure B.

5.3 Being aggrieved by the said order, petitioner-original complainant preferred Criminal Revision Application No. 17 of 2022 before the learned Sessions Court, Patan.

5.4 The learned Sessions Judge, Patan, after hearing the learned advocates appearing for the respective parties, dismissed the revision application by order dated 6th July 2024.

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5.5 Being aggrieved, the petitioner has preferred the present petition, essentially invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, seeking the aforesaid reliefs.

6. Learned advocate Mr. Bhamare, referring to the provisions of Section 216 of the CrPC and Section 92 of the Act, 2016, submitted that the petitioner is a practicing advocate and it was well within the knowledge of the Investigating Officer that the petitioner is suffering from locomotive disability to the extent of more than 50%, as evidenced by the disability certificate. Yet, Investigating Officer ignoring that fact, as also the fact that petitioner was assaulted with the intention to humiliate for his disability, did not level the charge under Section 92 of the Act of 2016. According to the learned advocate appearing for the petitioner, although the said certificate was placed on record, the Investigating Officer failed to add the offence punishable under Section 92 of the Act, 2016 and thereby had committed manifest error.

6.1 Learned advocate submitted that specific allegations have been made in the FIR against the accused to the effect that they threatened the petitioner by stating that, since he had already lost one leg, they would break his other leg as well. According to him, the aforesaid allegation itself indicates that the petitioner, being a person with disability,

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was intentionally insulted and intimidated with the intent to humiliate him on account of his disability.

6.2 Learned advocate appearing for the petitioner further referred to the judgment of the Hon'ble Supreme Court in ***Dr. Nallapareddy Sridhar Reddy v. State of Andhra Pradesh and Others*****, reported in (2020) 12 SCC 467,** to submit that the Court is empowered to alter or add any charge at any time before the pronouncement of judgment under Section 216 of the CrPC. He, therefore, submitted that, having regard to the facts and circumstances of the case, the provisions of Section 92 of the Act, 2016 and the material collected during the course of investigation, it was necessary for the learned Trial Court to alter the charge and add the charge for the offence punishable under Section 92 of the Act, of 2016.

6.3 Assailing the impugned orders, learned advocate Mr.Brahmbhatt appearing for the petitioner submitted that both the Courts below have committed serious and manifest errors in rejecting the prayer for alteration of the charge, without properly appreciating the provisions of Section 92 of the Act, 2016, as also material evidence collected during investigation.

6.4 Upon the aforesaid submissions, Mr.Brahmbhatt, learned advocate urged that the present petition be allowed

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and the charge framed against the accused in Criminal Case No.355 of 2021 be altered by adding the charge for the offence punishable under Section 92 of the Act 2016.

7. *Per contra,* learned advocate learned advocate appearing for the accused referred to the judgment of the Supreme Court in ***Thakur Ram and Others v. State of Bihar*, reported in AIR 1966 SC 911,** to submit that the power under Section 216 of the CrPC can be exercised by the Court on its own and that the de facto complainant has no right to seek any direction or order under the said provision.

7.1 He further submitted that, in the present case, the petitioner, being a practicing advocate, has taken undue advantage of his position and has lodged a false complaint against the accused with an oblique motive to settle personal scores. He also submitted that the necessary ingredients for attracting the provisions of Section 92 of the Act, 2016 are conspicuously absent upon a plain reading of the FIR and the statements of the petitioner. He, therefore, support the impugned orders and submit that the learned Courts below have committed no error in rejecting the application. Accordingly, he urged that the present petition be dismissed.

8. Learned APP adopted the submissions advanced by learned advocate Mr. Keval Brambhatt and submitted that the petitioner, being the de facto complainant, has no right to

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direct or steer the proceedings arising out of the police complaint or the criminal case instituted pursuant thereto. The petitioner, in his capacity as a de facto complainant, cannot maintain an application under Section 216 of the CrPC seeking addition or alteration of the charge. Therefore, according to the learned APP, the learned Trial Court has rightly rejected the application at Exhibit 6, and the said order has also been rightly affirmed by the learned Sessions Court in the revision proceedings.

8.1 In view of the aforesaid submissions, learned APP urged that the present petition be dismissed.

9. Regard being had to the rival submissions canvassed by learned advocates for the respective parties, at the outset, it would be apposite to refer to Section 92 of the Act of 2016, which reads as under:

> **92. Punishment for offences of atrocities.- Whoever,-**
>
> (a)intentionally insults or intimidates with intent to humiliate a person with disability in any place within public view;
>
> (b)assaults or uses force to any person with disability with intent to dishonour him or outrage the modesty of a woman with disability;
>
> (c)having the actual charge or control over a person with disability voluntarily or knowingly denies food or fluids to him or her;
>
> (d)being in a position to dominate the will of a child or

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> woman with disability and uses that position to exploit her sexually;
>
> (e)voluntarily injures, damages or interferes with the use of any limb or sense or any supporting device of a person with disability;
>
> (f)performs, conducts or directs any medical procedure to be performed on a woman with disability which leads to or is likely to lead to termination of pregnancy without her express consent except in cases where medical procedure for termination of pregnancy is done in severe cases of disability and with the opinion of a registered medical practitioner and also with the consent of the guardian of the woman with disability, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

10. On plain reading of the aforesaid provision, it emerges that the provision contemplates, inter alia, intentional insult or intimidation of a person with disability, with the intent to humiliate such person in any place within public view, or assault or use of force against a person with disability with the intent to dishonour such person or outrage the modesty of a woman with disability. Thus, the essential ingredients for attracting the provisions of Sections 92(a) and 92(b) of the Act, 2016, as the case may be, must be borne out from the material available on record. Insofar as Section 92(a) is concerned, the element of the act having been committed in a place within public view is of significance. Further, the requisite intention to humiliate or dishonour a person on account of his disability is also a material consideration for invoking the said provision.

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11. Plain reading of the FIR lodged by the petitioner, who is himself a practicing advocate, does not disclose the necessary ingredients so as to attract the provisions of Section 92 of the Act, 2016. At this juncture, it would be appropriate to extract the relevant contents of the FIR as under:

> *On last 18/11/2019, at around five thirty in the evening, I had left Patan Court to go to my home at Kani, and when I reached to Digdi Patiya, I received a phone call on my mobile number from my nephew Jitu, who stated that Vaghela Naginbhai Mohanbhai and his family members are quarreling with me and have come to assault me; therefore please do something. Therefore, I immediately came to Balisana Police Station and spoke to the P.S.I. regarding this matter. Thereupon, the officer told that 'you reach and I will come with the police personnel'. Therefore, after sitting with the P.S.O. for a short time, I left to go to Kani and reached Kani at half past six o'clock and at that time, seeing me having come home, Vaghela Naginbhai Mohanbhai arrived with a stick in his hand, and his wife Priyankaben and his sister-in-law Gitaben Hasmukhbhai Vaghela and his brother Hasmukh Mohanbhai Vaghela also came to my house, hurled obscene and filthy mother-sister abuses at me, and stated that we do not want to keep you alive— you do not have one leg and we want to break your other leg too and we want to kill you. As they uttered such abuses, when I told them not to hurl abuses and go to your house, Naginbhai got provoked and came to hit me with the stick which was in his hand; hence, my nephew Rajubhai caught hold of him, and as other people gathered, they were made to understand and sent away, and at that time, these people left after giving threats to kill.*

12. The learned Trial Court, as well as the learned Sessions Court, has considered the aforesaid aspect while rejecting the petitioner's prayer. Upon examination of the impugned orders and the material available on record, this

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Court finds no patent illegality or material infirmity warranting interference in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India. Moreover, it is a settled position of law that the power under Section 216 of the CrPC to alter or add any charge is vested with the Court and may be exercised by the Court on its own. No party has an enforceable right to seek an order directing the Court to exercise such power in a particular manner.

13. In case of ***P. Kartikalakshmi v. Sri Ganesh*, reported in (2017) 3 SCC 347,** the Hon'ble Supreme Court held as under:

> *"6. ... Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is 12 (2017) 3 SCC 347 exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law." (Emphasis supplied)*

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14. In another judgment in case of ***Anant Prakash Sinha v. State of Haryana*, reported in (2016) 6 SCC 105,** the Hon'ble Supreme Court held as under:

> *"18. ... the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence 13 (2016) 6 SCC 105 comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.*
>
> *19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial..." (Emphasis supplied)*

15. Thus, there can be no cavil with the proposition that the power of the Court to alter or add any charge at any stage before the pronouncement of judgment is wide and unfettered, subject to the statutory requirements. However, the existence of such power does not confer upon the de facto complainant any vested right to compel the Court to exercise the same in a particular manner or to steer the proceedings

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for addition of a particular charge. Apt to note, learned APP, who is incharge of the trial before learned Trial Court did not support plea of petitioner to add charge of Section 92 of the Act of 2016. In absence thereof complainant cannot insist to frame charge of particular offence. What further appears that learned APP either at Revision stage or even in this petition support the plea of petitioner.

16. In the facts of the present case, the petitioner, who is a practicing advocate, has failed to demonstrate the existence of the necessary ingredients for attracting offence under Section 92 of the Act, 2016. The material on record does not justify the addition of the proposed charge. The manner in which the proceedings have been pursued also indicates an attempt to unnecessary protract the criminal proceedings and subject the accused to further litigation. Proceedings at all the stage carried by petitioner being practicing advocate unquestionably demonstrate that, he by raising frivolous plea intend to entangle to accused. Fact of petitioner being practising advocate gives presumption about awareness of provision of law, he must have knowledge that the FIR lacks charge of Section 92 of the Act of 2016, on receiving the copy of FIR but he did not raise any plea at earlier period during investigation but he came out with Application at Ex.6, no sooner criminal cases registered. This approach decipher that he by filling application (Ex.6) attempted to derail proceeding of criminal case with a view to harass the accused. In these circumstances, this Court is of

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the view that the present petition deserves to be dismissed with costs.

17. Appositely, this Court also finds that the present proceedings are frivolous and appear to have been initiated with an oblique motive to harass the accused and prolong the trial. The petitioner, being a practising advocate, has invoked Section 216 of the CrPC in a manner that has unnecessarily burdened the judicial process and caused further hardship to the opposite party. Undoubtedly, the right of access to justice is a valuable right. However, such a right carries with it a corresponding obligation to invoke the judicial process bona fide and for a legitimate adjudicatory purpose. The petitioner, being a practising advocate, is expected to be aware of the settled legal position governing the exercise of powers under Section 216 of the CrPC. The present proceedings, in the facts and circumstances of the case, are manifestly vexatious and seek to reopen an issue which has already been considered by the Courts below.

18. This Court would, therefore, be loath to permit its judicial process to be employed as an instrument of oppression or as a device to secure an advantage having no legitimate nexus with the adjudication of the proceedings. One cannot remain oblivious to the fact that unmeritorious proceedings consume valuable judicial time, which is inherently limited, and thereby have the potential to delay the adjudication of matters involving genuine disputes.

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19. In the aforesaid circumstances, this is appropriate case for imposing costs, which is one of the recognised judicial measures to discourage the misuse of the process of law.

20. For the foregoing reasons, the present petition stands dismissed with costs quantified at Rs.5,000/-, to be deposited by the petitioner-original complainant with the District Legal Services Authority, Patan. Rule is discharged. Interim relief, if any, stands vacated. Connected Criminal Misc. Application, if any, does not survive and stands disposed of accordingly.

21. The petitioner shall deposit the aforesaid amount of Rs.5,000/- with the District Legal Services Authority, Patan, within a period of 15 days from the date of receipt of a copy of this order. In the event of failure to deposit the amount within the stipulated period, the same shall be recovered as a fine, and the concerned District Legal Services Authority shall issue the necessary certificate for recovery of the amount as arrears of land revenue.

(J. C. DOSHI,J)

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