

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET  
ASIDE FIR/ORDER) NO. 8514 of 2022**

**With**

**R/CRIMINAL MISC. APPLICATION NO. 16095 of 2022**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE P. M. RAVAL**

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Approved for Reporting	Yes	No
		✓

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PROJECT DIRECTOR , PROJECT IMPLEMENTATION UNIT,  
PALANPUR, K.P.S. CHAUHAN & ANR.

Versus

STATE OF GUJARAT & ANR.

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Appearance:

NANAVATI & CO.(7105) for the Applicant(s) No. 1,2

MR VIVEK V BHAMARE(6710) for the Respondent(s) No. 2

MR VN BHAMARE(1122) for the Respondent(s) No. 2

MR KM ANTANI, APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL**

**Date : 17/06/2026**

**ORAL JUDGMENT**

1. These applications under Section 482 of Criminal Procedure

Code, 1973 (the Code) are filed seeking to quash the FIR being C.R. No. 11217036210888 of 2021, registered with Varahi Police Station, Dist.: Patan for the offences punishable under Sections 304 and 304A of the Indian Penal Code, 1860 (IPC).

2. As both the matters arise out of the same FIR, the same came to be heard together and are being decided by this common judgment.

3. Succinctly stated, the case of the prosecution is that on 30.12.2021, the *de facto* complainant along with his wife, was going on a motorcycle from Sami to Varahi village on national highway and when reached near Sadpura village at about 4:00 p.m. in evening, one truck was moving ahead of them. While so, suddenly, a pothole was found on the road. The *de facto* complainant slowed down his motorcycle, however, as the pothole was big, they both fell from motorcycle due to which, his wife sustained serious injuries. She was immediately rushed to the hospital, however, she was declared brought dead. Hence, the grieved husband filed the FIR in question for the death of his wife due to pothole on the road, against the responsible persons of the National Highways Authority of India.

4. Heard, learned advocate Mr. Maulik Nanavati for the applicants in Criminal Misc. Application No. 8514 of 2022, learned advocate Mr. Ashish M. Dagli for the applicant in Criminal Misc.

Application No. 16095 of 2022, learned advocate Mr. Vivek Bhamre for the respondent No. 2 - *de facto* complainant and the learned Additional Public Prosecutor for the respondent - State.

4.1 The bone contention of the learned advocate for the applicants is that the ingredients of the offence alleged against the present applicants are not at all satisfied.

4.2 The learned advocate for the applicants in Criminal Misc. Application No. 8514 of 2022 would submit that the applicants are the Government servants and by virtue of Section 28 of the National Highways Authority of India Act, 1988 (NHAI Act), protection is granted to its officers for the acts done by them in discharge of their official duties and owing to such a bar, the FIR in question is not sustainable against them under the law. It is also submitted that prosecution of the applicants is barred by Section 197 of the Code as there is no proposal by the investigating agency to the competent authority for according sanction to prosecute the applicant in their official capacity as public servants.

5. So far as applicant in Criminal Misc. Application No. 16095 of 2022, it is submitted by the learned advocate appearing on his behalf that no direct contract for the road work was given to the present applicant and a sub-contract was given for repairing and maintenance. It is submitted that so far as the place where the incident had occurred, no repairing and/or maintenance work was

undertaken by the applicant nor any work order has been issued to him relating to the same. Further, the guarantee period of six months of the original contractor was also over. Further, the applicant has no direct dealing with the NHAI.

6. Making such submissions, it is urged that present FIR *qua* the applicants may be quashed and set aside as no *prima facie* case is made out against the present applicants.

7. As against that, the learned advocate for the respondent No. 2 - *de facto* complainant would submit that so far as the applicants of Criminal Misc. Application No. 8514 of 2022 are concerned, the applications are not maintainable at all in view of the fact that they have moved this Court under Section 482 of the Code in official capacity and not in the personal capacity. Accordingly, it is urged that only on that ground, the applications are not maintainable.

7.1 However, he would further submit that as per the settled law of the land, inherent powers under Section 482 of the Code should be used sparingly and with a view to curb the abuse of process of law. He submitted that in the case on hand, a *prima facie* case is made out against the applicants inasmuch as, on account of sheer negligence, the wife of the *de facto* complainant has died. He submitted that as the road was not repaired/maintained, which was the responsibility of the applicants and due to pothole on the same, death of wife of the *de facto* complainant has occurred due to

falling down from the motorcycle and hence, he requested that it is ultimately a matter of trial after which, the truth could be churned out and hence, these applications may not be entertained and they urged to be dismissed.

8. Heard and considered the submissions advanced by learned advocates for the parties and carefully gone through the material placed on record.

8.1 Dealing first with the threshold challenge raised by the *de facto* complainant regarding maintainability, this Court finds this preliminary objection to be entirely devoid of legal merit. A bare perusal of the cause-title reveals that while the official designations of the applicants are mentioned, their specific individual names have been clearly articulated alongside. The mere sequence or syntax of names in the cause-title cannot change the character of the petition from an individual seeking personal relief against criminal liability into an unauthorized institutional application. The objection is, accordingly, turned down.

9. Prior to assessing the factual matrix on the touchstone of criminal jurisprudence, it is apposite to reinforce the settled legal position governing the scope, ambit, and limits of the inherent jurisdiction vested under Section 482 of the Code. The jurisprudential parameters regulating the exercise of this extraordinary power have been authoritatively catalogued by

Hon'ble Supreme Court in a long line of precedents, chief among them being the authoritative in the case of *State of Haryana v. Bhajan Lal [AIR 1992 SC 604]*. Therein, Hon'ble Supreme Court crystallized seven distinct, illustrative categories of cases where judicial intervention under Section 482 of the Code or Article 226 of the Constitution is necessitated to secure the ends of justice and clip any abuse of the process of Court. The relevant portion of Paragraph 102 of the said judgment is extracted below:

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section*

*155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

9.1 Evaluating the present applications on the anvil of the principles enunciated in *Bhajan Lal (supra)*, this Court has to determine whether the allegations in the FIR, even when accepted

at face value, satisfy the essential statutory ingredients of Sections 304 and 304A of the IPC. This Court must ensure that criminal machinery is not permitted to degenerate into an engine of harassment where liability under criminal law is completely absent.

9.2 The FIR reveals that the unfortunate accident occurred because a moving truck obstructed the visibility of a pothole on the National Highway, causing the motorcycle to lose balance, leading to the tragic death of the *de facto* complainant's wife.

9.3 Upon balancing the rival contentions and dissecting the evidentiary record, the following undisputed facts emerge on record:

- i) The applicants in Criminal Miscellaneous Application No. 8514 of 2022 are public servants under Section 27 of the NHAI Act and enjoy statutory immunity under Section 28 of the said Act. Section 28 explicitly provides:

*“28. Protection of action taken in good faith. – (1) No suit, prosecution or other legal proceeding shall lie against the Authority or any member or officer or employee of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder. (2) No suit, prosecution or other legal proceeding shall lie against the Authority or any member or officer or employee of the Authority for any damage caused or likely to be caused by anything which is in*

*good faith done or intended to be done under this Act or the rules or regulations made thereunder."*

ii) The applicants in Criminal Miscellaneous Application No. 8514 of 2022 have power to enter in to contract under Section 14 of The National Highways Authority of India Act, 1988 more particularly under section 8A of the National Highways Act, 1956 which gives power to the Central Government to enter in to an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway pursuant to which the authorised officer have entered in to contract for 1 year with effect from 13.08.2021 with Shiva Buildtech Pvt. Ltd. Thus, the applicants have acted in good faith and have acted in accordance with law for the purpose of maintenance of highway under question where the fateful accident took place.

iii) here is an absolute lack of material demonstrating any element of direct, gross, or reckless criminal negligence or deliberate inaction attributable to the applicants in Criminal Miscellaneous Application No. 8514 of 2022.

iv) As regards the applicant in Criminal Miscellaneous Application No. 16095 of 2022, no direct contract or specific Work Order was ever issued in his favor by the principal authority for the stretch of road where the incident occurred.

v) The learned counsel for the *de facto* complainant or Learned APP have failed to bring on record any document or evidentiary material establishing that the maintenance of the specific locus of the accident was the legal responsibility of the applicant in Application No. 16095 of 2022.

vi) The record is completely barren of any evidence suggesting that the public servants acted with *mala fides* or outside the scope of "good faith" performance of duty.

vii) The primary contract for the maintenance of the highway stretch was executed with a distinct corporate entity, namely Shiva Buildtech Pvt. Ltd., and not with the applicant in Application No. 16095 of 2022 nor is there anything to point out that the applicant was given sub contract to maintain the stretch of road where the accident took place due to pothole.

9.4 Hon'ble Supreme Court in *Pradeep Kumar Kesarwani v. State of Uttar Pradesh [AIROnline 2025 SC 956]* recently synthesized the jurisprudence governing Section 482 of the Code and formulated a strict four-step analytical framework to evaluate petitions seeking the quashing of criminal trials at their inception. The framework dictates:

"20. *The following steps should ordinarily determine the veracity*

*of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the CrPC:*

*(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?*

*(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*

*(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?*

*(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

*If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial..."*

9.5 Applying the aforementioned four-step test to the facts on hand, the documentary evidence relied upon by the applicants is of unimpeachable quality and stands entirely unrefuted by Respondents. Such material cannot be lightly brushed aside by a

Court of law, even at the preliminary stage of quashing.

9.6 In view of the distinct absence of the essential ingredients of criminal negligence required to attract Sections 304 or 304A of the IPC, forcing the parties to endure a full-fledged criminal trial would be an exercise in futility. The controversy falls squarely within the exceptions carved out in *Pradeep Kumar Kesarwani (supra)*.

10. As a logical conclusion to the detailed discussion above, these applications succeed and are hereby allowed. First Information Report bearing C.R. No. 11217036210888 of 2021 registered at Varahi Police Station, District Patan, along with all consequential criminal proceedings flowing therefrom, stands quashed and set aside *qua* the present applicants only.

10.1 Rule is made absolute in the aforementioned terms. **Direct service** is permitted.

[ P. M. Raval, J. ]