

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 15603 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

=====		
Approved for Reporting	Yes	No
=====		

SANTOKI SHANTANU VITTHALBHAI & ANR.
 Versus
 STATE OF GUJARAT & ANR.

=====

Appearance:
 M S PADALIYA(7406) for the Applicant(s) No. 1,2
 ROHAN SHAH APP for the Respondent(s) No. 1
 RULE SERVED for the Respondent(s) No. 2

=====

CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 16/07/2026

ORAL JUDGMENT

1. By way of the present petition filed under Section 482 of the Code of Criminal Procedure, 1973, the petitioners are prayed to quash and set aside the FIR being CR No. 11215035200485/2020 registered with the Umreth Police Station, District : Anand on 13.05.2020 for the offences punishable under Sections 269,308,188 and 417 of the IPC read with Section 51(b) pf the Disaster Management Act.

2. Learned Advocate Mr. M.S. Padaliya for the applicants would submit that:

2.1 The petitioners are carrying on the businesses of SS Glass and Steel under the names “Manas Steel” and “Balkrushna Stamping,” respectively, in Rajkot District.

2.2 Due to the COVID-19 pandemic, a countrywide lockdown was imposed by the Government in March 2020.

2.3 Since work had come to a standstill during the COVID-19 period, the petitioners were not visiting their respective factory premises regularly. However, they later came to know from other factory owners that, on 13.05.2020, the workers employed in their factories, along with workers from nearby areas, were being transported from their workplaces to their native places. Before the petitioners could convince them not to migrate, they had already left the city.

2.4 The petitioners were not aware of the workers being transported in the tanker, as alleged in the FIR. Thus, the migration of the workers took place without the petitioners' knowledge or assistance.

2.5 Upon reading the entire charge-sheet, it is evident that the statements of the persons found in the Eicher container are stereotyped in nature and do not disclose any involvement of the present petitioners. The statements merely indicate that the driver of the Eicher container, Amrutlal Yadav, was from Uttar Pradesh and that the owner of the Eicher container and certain factory owners had decided to send the labourers to Uttar Pradesh in the said vehicle. However, there is not a single iota of evidence, including any call records, to establish that the present

petitioners were in contact with either the owner or the driver of the Eicher container. It is, therefore, argued that no case is made out against the petitioners. It is further submitted that, since Section 188 of the IPC is attracted, the bar under Section 195 would operate, and no court can take cognizance except upon a written complaint made by the competent public servant before the competent court. As the present proceedings arise out of an FIR and not a complaint as defined under Section 2(d) of the CrPC, no valid cognizance could have been taken. It is, therefore, prayed that the present application be allowed.

3. Per contra, the learned APP submitted that there are statements of nearly 104 persons who were travelling in an Eicher container without any valid permit issued by the competent authority for travel to Uttar Pradesh. The statements of those persons reveal that the said 104 persons were travelling in the Eicher container at the behest of the petitioners and the owners of the container. It is, therefore, submitted that a prima facie case is made out, and the learned APP has accordingly prayed for rejection of the present petition.

4. Heard Learned Advocates for the respective parties.

4.1 At the outset, the principles laid down in the case of Devendrakumar Vs. State of Delhi (NCT) and others reported in 2025 INSC 1009 would be relevant. The concluding part would thus, read as under:-

"E. CONCLUSION

59. We may summarize our final conclusion as under:

(i) Section 195(1)(a)(i) of the Cr.P.C. bars the court from taking

cognizance of any offence punishable under Sections 172 to 188 respectively of the I.P.C., unless there is a written complaint by the public servant concerned or his administrative superior, for voluntarily obstructing the public servant from discharge of his public functions. Without a complaint from the said persons, the court would lack competence to take cognizance in certain types of offences enumerated therein.

(ii) If in truth and substance, an offence falls in the category of Section 195(1)(a)(i), it is not open to the court to undertake the exercise of splitting them up and proceeding further against the accused for the other distinct offences disclosed in the same set of facts. However, it also cannot be laid down as a straitjacket formula that the Court, under all circumstances, cannot undertake the exercise of splitting up. It would depend upon the facts of each case, the nature of allegations and the materials on record.

(iii) Severance of distinct offences is not permissible when it would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the Cr.P.C., which requires a complaint by a public servant for certain offences against public justice. This means that if the core of the offence falls under the purview of Section 195(1)(a)(i), it cannot be prosecuted by simply filing a general complaint for a different, but related, offence. The focus should be on whether the facts, in substance, constitute an offence requiring a public servant's complaint.

(iv) In the aforesaid context, the courts must apply twin tests. First, the courts must ascertain having regard to the nature of the allegations made in the complaint/FIR and other materials on record whether the other distinct offences not covered by Section 195(1)(a)(i) have been invoked only with a view to evade the mandatory bar of Section 195 of the I.P.C. and secondly, whether the facts primarily and essentially disclose an offence for which a complaint of the court or a public servant is required.

(v) Where an accused is alleged to have committed some offences which are separate and distinct from those contained in Section 195, Section 195 will affect only the offences mentioned therein. However, the courts should ascertain whether such offences form an integral part and are so intrinsically connected so as to amount to offences committed as a part of the same transaction, in which case the other offences also would fall within the ambit of Section 195 of the Cr.P.C. This would all

depend on the facts of each case.

(vi) Sections 195(1)(b)(i)(ii) & (iii) and 340 of the Cr.P.C. respectively do not control or circumscribe the power of the police to investigate, under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into play and the Court would not be competent to take cognizance. However, that Court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation, provided the procedure laid down in Section 340 of the Cr.P.C. is followed.”

4.2 If the facts of the present case are tested on the aforesaid principles, the offences squarely fall within the ambit of Section 195(1)(a)(i), inasmuch as it is alleged that, during the lockdown and in breach of the order duly promulgated by a public servant, and at the instance of the present petitioners, 18 workers employed by the present petitioners were travelling to Uttar Pradesh. It is, therefore, alleged that the petitioners committed offences punishable under Sections 269, 308, 188 and 417 of the IPC, read with Section 51(b) of the Disaster Management Act. These offences cannot be split, and consequently, the proceedings qua the remaining distinct offences arising out of the same set of facts cannot be continued.

4.3 Since it would effectively circumvent the protection afforded by Section 195(1)(a)(i) of the CrPC, which requires a complaint to be lodged by the public servant for the offences enumerated therein, such a course is impermissible. Thus, when the core offence falls within the ambit of the bar under Section 195 of the CrPC, it is not permissible for the prosecution to file a general complaint for different but related offences arising out of the said offence. If, in substance, the allegations constitute an offence

requiring a complaint by a public servant, as contemplated under Section 2(d) of the CrPC, then, applying the principles laid down hereinabove, it cannot be said that the other distinct offences are outside the ambit of the bar under Section 195(1)(a)(i) of the CrPC, as they are so intricately connected that they form part of the same transaction.

5. In view of the above, the captioned petition stands allowed. The impugned FIR being CR No. 11215035200485/2020 registered with the Umreth Police Station, District: Anand on 13.05.2020 for the offences punishable under Sections 269,308,188 and 417 of the IPC read with Section 51(b) of the Disaster Management Act, along with all consequential proceedings arising therefrom qua the present petitioners, stands quashed and set aside.

6. Rule is made absolute for the aforesaid extent.

MMP

(P. M. RAVAL, J)