

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 4324 of 2025****With****CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2025****In****R/CRIMINAL MISC.APPLICATION NO. 4324 of 2025**=====
SIDHARTH HARSHADBHAI PADALIYA**Versus****STATE OF GUJARAT**
=====**Appearance:****MR. YASHDHAR Y. SUDRA(14610) for the Applicant(s) No. 1****MR ADITYA JADEJA, APP for the Respondent(s) No. 1**
=====**CORAM:HONOURABLE MS. JUSTICE S.V. PINTO****Date : 29/04/2026****ORAL ORDER**

1. Rule returnable forthwith. Learned APP waives service of notice of rule for the respondent-State. Though served, none appears for respondent no.2.

2. Considering the facts and circumstances of the case and with consent of learned advocate for the respective parties and the fact that FIR is quashed qua main accused No.1 to 7 by the Coordinate Bench of this Court vide order dated 02.09.2024 passed in Criminal Misc. Application No. 22009 of 2021, the present matter is taken up for final disposal forthwith.

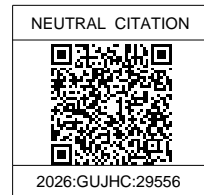
3. By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."), the applicant has prayed to quash and set aside the



complaint being FIR **C.R. No. 11202009201601 of 2020 with City 'B' Division Police Station, Jamnagar** for the offences punishable under Sections 406 & 420 of IPC as well as Sections 13, 16, 17, 19, 23(1) (b), (c),(e) & (f) of The Securities Contract (Regulation) Act, 1956 and all the consequential proceedings arising therefrom.

4. The facts of the case are that on 22.10.2020, respondent No.2, PSI, based on information received by a police officer while patrolling an area in Jamnagar City along with other police officers, raided the shop of accused No.3. The accused persons were trading in securities without a license or permission and without entering into a contract with SEBI, in violation of the provisions of the Act. It is further alleged that during the raid, the police found accused Nos.1 to 3 at the scene of the offense, along with documents and other materials such as a computer, register, etc., as stated in the FIR. It is also alleged that during the raid, the police discovered certain computer printouts containing codenames of accused Nos.7 to 11, which led to the filing of the present impugned complaint.

5. Learned advocate for the applicant submits that the applicant has nothing to do with the offence and he is falsely implicated in it. Upon submission of charge sheet, the Ld. Magistrate committed the case to the Sessions Court, Jamnagar since the offences punishable under the provisions of the Act are triable by the Sessions Court. Pursuant thereto, Sessions Case No.113/2021 came to be registered and the same is

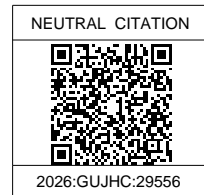


pending at the stage of framing of charge in the Court of Ld. 3rd Additional District Judge, Jamnagar.

5.1 It is submitted that there is a specific bar contained in Section 26 of the Act, and the Court could not have taken cognizance based on a police report in view of this bar. In the present case, in the absence of a complaint in writing filed before the appropriate court, the lower court took cognizance of the alleged offenses based on a police report, which is clearly in contravention of the provisions of Section 26. Therefore, the entire proceedings are illegal and liable to be quashed. It is further submitted that the allegations leveled against the present applicant are far from the truth and do not constitute criminal breach of trust. In light of Section 26 of the Act, the lower court ought not to have taken cognizance of the offenses based on a police report. Therefore, the application may be allowed.

5.2. Learned advocate further submits that the impugned qua the main accused nos. 1 to 7 has been quashed by the Coordinate Bench of this Court (Coram : Hon'ble Mr. Justice Hasmukh D. Suthar, J.) passed in Criminal Misc. Application No. 22009 of 2021 dated 02.09.2026. Therefore, the present application may be allowed.

6. Learned APP Mr. Aditya Jadeja has strongly opposed the present application and submits that the accused nos. 1 to 7 were engaging in trading in securities without a license or



permission and without entering into a contract with SEBI, in violation of the provisions of the Act. During the raid, the police found accused persons at the scene of the offense, along with documents and other materials such as a computer, register, etc., as stated in the FIR. During the raid, the police discovered certain computer printouts containing codenames. However, the present applicant is not named in the FIR but his name came in light through the mobile phone of the original accused no.3. He therefore, requested to dismiss the present application.

7. Having heard learned advocates on both the sides and considering the fact, it appears from the complainant that on 22.10.2020, respondent No.2, PSI, based on information received by a police officer while patrolling an area in Jamnagar City along with other police officers, raided the shop of accused No.3. The accused persons were trading in securities without a license or permission and without entering into a contract with SEBI, in violation of the provisions of the Act. It is further alleged that during the raid, the police found accused Nos.1 to 3 at the scene of the offense, along with documents and other materials such as a computer, register, etc., as stated in the FIR. It is also alleged that during the raid, the police discovered certain computer printouts containing codenames of accused Nos.7 to 11, which led to the filing of the present impugned complaint.

8. In view of the above, there is no direct evidence or material to suggest that there was any entrustment of property. The allegations in the complaint accuse the applicant of



engaging in fraud and misconduct, but nowhere is it alleged that he pocketed money by causing a loss to anyone or obtaining wrongful gain. Even if this fact is accepted, it constitutes merely a breach of the Securities Contract (Regulation) Act, which has been wrongly characterized as criminal breach of trust. Criminal breach of trust, as defined in Section 405 of the IPC, is as follows:

"Whoever, being entrusted with property, or having dominion over property, dishonestly misappropriates or converts that property to their own use, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which they have made concerning the discharge of such trust, or willfully allows any other person to do so, commits 'criminal breach of trust.'"

9. In view of the above, it is clear that the applicant has neither caused any financial loss to anyone nor obtained any wrongful gain. The investigating agency has also failed to produce any concrete documents showing financial loss to anyone in support of his argument. Even when asked on what grounds the criminal breach of trust is alleged to have been committed by the applicant, the respondent remained silent. Merely based on the complaint, a case under the provisions of criminal breach of trust was registered, but the investigating agency has not produced any evidence to support this assertion. Therefore, this does not constitute criminal breach of trust, and Section 406 of the IPC is not applicable.



10. Regarding the provisions under the Securities Contract (Regulation) Act, upon considering Section 26 of the Act, it is clear that the lower court ought not to have taken cognizance of the offenses based on a police report.

10.1 Section 26 of the Securities Contract (Regulation) Act as under:

- (1) No court shall take cognizance of any offense punishable under this Act, or any rules, regulations, or bye-laws made thereunder, except on a complaint made by the Central Government, the State Government, the Securities and Exchange Board of India, a recognized stock exchange, or any other authorized person.
- (2) No court inferior to that of a Court of Session shall try any offense punishable under this Act.

11. In view of the above, a plain reading of Section 26 of the Act suggests that no court can take cognizance of any offense punishable under the Act except on a complaint made by the Central Government, the State Government, the Securities and Exchange Board of India, a recognized stock exchange, or any authorized person. Therefore, no case is made out under the provisions of the Securities Contract (Regulation) Act.

12. So far as offence under Section 420 of the IPC is concerned, it is appropriate to refer to the decision of the Hon'ble Apex Court in the case of **Rekha Jain vs. The State of Karnataka & Anr. reported in 2022 LiveLaw (SC) 468**, wherein the Hon'ble Supreme Court held that, to make out a case against



a person for the offence under Section 420 of IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. Further, in the case of **Sarabjit Kaur vs. State of Punjab & Anr. reported in (2023)5 SCC 360** has held in paragraph No.13 as follows:

“13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that the respondent No.2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by the respondent No.2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal Courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which F.I.R. was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the Court.”

13. In the case of **State of Haryana v. Bhajan Lal**, reported in 1992 Supp (1) SCC 335, the Apex Court has set out the categories of cases in which the inherent power under



Section 482 CrPC can be exercised and held in para 102 as under:

“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 Art. 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give 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 noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under sec. 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.”

14. In the result, the application is allowed. The impugned complaint being **C.R. No. 11202009201601 of 2020 with City 'B' Division Police Station, Jamnagar** as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside qua the applicant herein. Rule is made absolute. Direct service is permitted.

15. Connected application/s, if any, stand/s disposed of.

F.S. KAZI

(S. V. PINTO,J)