

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 908 of 2026****With****R/CRIMINAL REVISION APPLICATION NO. 918 of 2026****With****R/CRIMINAL REVISION APPLICATION NO. 921 of 2026****With****R/CRIMINAL REVISION APPLICATION NO. 651 of 2026**

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AKSHARBHAI RAMESHBHAI BARAIYA & ORS.

Versus

STATE OF GUJARAT

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IN CRIMINAL REVISION APPLICATION NO.908 OF 2026

Appearance:

MR. KULDEEP D VAIDYA(7045) for the Applicant(s) No. 1,2,3,4,5,6,7
MR PRANAV DHAGAT, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1**IN CRIMINAL REVISION APPLICATION NO.918 OF 2026**

Appearance:

MR. KULDEEP D VAIDYA(7045) for the Applicant(s) No. 1,2,3
MR PRANAV DHAGAT, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1**IN CRIMINAL REVISION APPLICATION NO.921 OF 2026**

Appearance:

MR. KULDEEP D VAIDYA(7045) for the Applicant(s) No. 1
MR PRANAV DHAGAT, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1**IN CRIMINAL REVISION APPLICATION NO.651 OF 2026**

Appearance:

MR RATHIN P RAVAL for the Applicant(s) No. 1
MR PRANAV DHAGAT, ADDITIONAL PUBLIC PROSECUTOR for the
Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI**Date : 23/04/2026
COMMON ORDER****1. RULE.** Learned Additional Public Prosecutor waives



service of notice of Rule on behalf of the respondent - State.

2. In all the applications, a common issue is raised contradicting the invocation of The Gujarat Public Examination (Prevention of Unfair Means) Act, 2023 (referred to in short as 'the Examination Act') which had come in force on 03.03.2023, raising a contention that the Act has come into force after the alleged examination and therefore, the Act cannot be applied retrospectively.

3. Learned advocate appearing for the applicant in Criminal Revision Application No.651 of 2026 Mr. Rathin P. Raval and learned advocate appearing for the respective applicants in the remaining applications Mr. Kuldeep D. Vaidya have made submissions to the effect that the learned 4th Additional District and Sessions Judge, Bhavnagar was moved under Section 227 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') which is equivalent to Section 250 of the Bharatiya Nagarik Suraksha Sanhita, 2023 making a prayer to discharge the



applicants for the offences punishable under Sections 12(1), 12(3) and 12(4) of the Examination Act, however, however, the learned Sessions Judge rejected the same.

4. The applicants of all the matters have been made accused in the First Information Report registered at Bharatnagar Police Station, District Bhavnagar registered on 14.04.2023 as C.R. No.11198068230274 of 2023. The offences were under Sections 406, 409, 419, 420, 465, 467, 468, 471, 120B, 34 and 201 of the Indian Penal Code (IPC), under Section 66(D) of the Information Technology Act, 2000 (referred to in short as 'the IT Act') and under Sections 12(1), 12(3) and 12(4) of the Examination Act. The charge-sheet No.24 of 2023 came to be filed by the Investigating Officer which culminated into Sessions Case Nos.64 of 2023 and 66 of 2023.
5. The allegation is that the person who was the original candidate and the person who was appearing in the examination as a dummy candidate both have been made as accused in the matter by arraigning them as an accused through the provisions of the Sections of IPC,



under the IT Act and the Examination Act.

6. The role of the various applicants surfacing on record are as under :-

Criminal Revision Application No.908 of 2026

Applicant	Examination	Exam Date	Role
Aksharbai Rameshbhai Baraiya	Bin Sachivalay Clerk 2018-19	24.04.2022	Appeared as Dummy
Dineshrai Batukrai Pandya	MPHW-2021-22	26.06.2022	Dummy appeared on his behalf
Sagar Balashankar Pandya	MPHW-2021-22	26.06.2022	Dummy appeared on his behalf
Nilesh Ghanshyambhai jani	MPHW-2021-22	26.06.2022	Appeared as Dummy
Jaydeep Bhadrshbhai Dhandhalya	MPHW-2021-22	26.06.2022	Appeared as Dummy
Kiranbhai Dineshbhai Baraiya	MPHW-2021-22	26.06.2022	Dummy appeared on his behalf
Hardikbhai Shantilal Baraiya	Gram Sevak 2017	18.02.2017	Dummy appeared on his behalf

Criminal Revision Application No.918 of 2026

Applicant	Examination	Exam Date	Role
Rameshbhai Bachubhai Baraiya	MPHW-2021-22	26.06.2022	Dummy appeared on his behalf
Ramnikbhai Bhanushankarbhai Baraiya	MPHW-2021-22	26.06.2022	Dummy appeared on his behalf
Kalpeshbhai Mavjibhai Pandya	MPHW-2021-22	26.06.2022	Dummy appeared on his behalf



Criminal Revision Application No.921 of 2026

Applicant	Examination	Exam Date	Role
Jignaben Jagdishbhai Dhandhalya	STD-10 (S.S.C.) 2022	30.03.2022	Dummy appeared on her behalf

Criminal Revision Application No.651 of 2026

(Kalpeshbhai Bhupatbhai Jani)

Date of Exam	Examination	Allegedly on behalf of
12.02.2017	Junior Clerk	Maheshbhai Ramjibhai Chauhan
19.02.2017	Health (MPHW)	Ramnikbhai Ramjibhai Baraiya
2022-2023	Junior Clerk	No examination was given (Neither the original candidate nor the alleged dummy candidate have appeared. They were absent)

7. Both the learned advocates submitted that the Examination Act came in to force on 03.03.2023 and the Examination was conducted prior to the Act coming into force, stating that all the applicants are protected by the fundamental rights as guaranteed under Article 20 of the Constitution of India, which reads as under :-

“20. Protection in respect of conviction for offences. - (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.



(3) No person accused of any offence shall be compelled to be a witness against himself.”

8. Learned advocate Mr. Rathin P. Raval has relied on the judgement of the Apex Court in the case of **Assistant Excise Commissioner, Kottayam and Others v. Esthappan Cherian and Another** reported in **2021 (10) SCC 210** and submitted that the rule or law cannot be construed as retrospective unless it expressly or manifests an intention to the contrary. While expressing the view in Paragraph 14 of the decision, a reference has been made to the case of **Commissioner of Income Tax v. Vatika Township Pvt. Ltd.** reported in **2015 (1) SCC 1**, where it has been observed as under :-

“14. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. In Commissioner of Income Tax v Vatika Township this court, speaking through a Constitution Bench, observed as follows :

“31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow’s backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not



find that his plans have been retrospectively upset.

*This principle of law is known as **lex prospicit non respicit** : law looks forward not backward. As was observed in **Phillips vs. Eyre** reported in **(1870) 6 LR QB 1**, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

*32. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd.* [(1994) 1 AC 486 : (1994) 2 WLR 39 : (1994) 1 ALL ER 20 (HL)]. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."*

9. The relevant judicial pronouncement has been referred to in Paragraphs 15 and 16, which is reproduced herein under :-

*"15. Another equally important principle applies: in the absence of express statutory authorization, delegated legislation in the form of rules or regulations, cannot operate retrospectively. In **Union of India v M.C. Ponnose** reported in **1970 AIR 395** this rule was spelt out in the following terms:*



“The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect.

16. The principle has been affirmed in many decisions such as Hukum Chand v Union of India 1959 AIR 536, Regional Transport Officer v Associated Transport Madras (P) Ltd. 1980 AIR 1972; Federation of Indian Mineral Industries v Union of India AIR Online 2017 SC 140 and recently, in Union of India v G.S. Chatha Rice Mills AIR Online 2020 SC 740.”

10. Learned Additional Public Prosecutor appearing for the respondent-State referred to report of the Police and has submitted about the facts of one lead case to state that in the year 2017, almost all forms were admitted of the Junior Clerk for the level of non-Sachivalaya but because of some reason, the examination could not be conducted and it was held in the year 2020. According to the case of the prosecution, one and a half month prior to the examination, as phone call was made by Prakash alias



P.K. Dave and was asked to come at Bhavnagar Line Circle for the examination. Thereafter, at about 8.00 in the evening, there was a meeting and during that period, Prakash alias P.K. Dave talked about to arrange for a dummy candidate by the name of Sanjay Harjibhai Pandya, resident of Taluka Talaja, District Bhavnagar. For that purpose, Rs.9,00,000/- was decided and the candidates were asked to have a communication with their father at home. At that time, as per the prosecution case, the candidates were asked to give a copy of the Aadhar Card to Prakash alias P.K. Dave. Thereafter, since the hall tickets were issued, which was to come to Prakash alias P.K. Dave at Leela Circle and accordingly, dummy candidate Sanjay Harjibhai Pandya had appeared and since the results were posted, it declared the candidate as passed in the examination. The applicant- Bhavsinh got a job as Junior Clerk in Polytechnic College, Bhavnagar. Therefore, Prakash alias P.K. Dave called him and asked for the amount to be paid at Leela Circle and the candidate had taken the money to be paid in cash of Rs.9,00,000/- and had gone to Leela Circle where Prakash alias P.K. Dave had come in a four wheel vehicle to



manage the money.

11. Referring to the individual case of the applicants, learned Additional Public Prosecutor submitted that some of the applicants are the original candidates and others have acted as dummy candidate for the applicants. The facts of the case are similar in nature.

12. It is an admitted fact which becomes clear on record is that the Examination Act had come into force on 03.03.2023. Article 20(1) of the Constitution clearly lays down that 'no person shall be convicted of any offence except for violation of a law in force at the time of commission of the act charged as an offence'. Thus, the offences would be of the breach of the law in force on the date of such alleged commission of offence.

13. As referred hereinabove, the date of examination are all prior to the Examination Act coming into force. The law does not lay down any provision giving any retrospective effect. As observed in the decision of the **Esthappan**



Cherian (supra) and by way of various authorities of law, no retrospective effect can be given to the new law which affects the rights unless it express or manifests an intention to the contrary.

14. Here in the present Examination Act, there is no such provision which conveys intention of giving a retrospective effect to the Examination Act. It requires mention that every act of an individual would be governed by the current law in force at the time of such act or activity. The law is as per the principle *lex prospicit non respicit : law looks forward not backward*. Under Indian Law, an accused person is to be arrested, tried and punished only under the laws that were in force on the date of the alleged offence. This principle is a fundamental right guaranteed under Article 20(1) of the Constitution of India known as the protection against ex post facto laws. An act cannot be considered as crime if it was not illegal at the time of the offence.



15. Thus, following the principles of fairness read with Article 20 of the Constitution of India, this Court is of the view that the invocation of the Examination Act against all the present applicants is bad, illegal and violative of their fundamental rights.
16. Hence, the present applications are allowed qua the applicants herein. The order dated 21.01.2016 of the learned 4th Additional District and Sessions Judge, Bhavnagar in Sessions Case Nos.64 of 2023, 66 of 2023 is set aside. The applicants are discharged for the offences punishable under Sections 12(1), 12(3) and 12(4) of the Examination Act.
17. Rule made absolute to the aforesaid extent.

CAROLINE / # 69, 129, 130 & 145

Sd/-
(GITA GOPI, J)