

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE**  
**FIR/ORDER) NO. 8473 of 2018**

**FOR APPROVAL AND SIGNATURE:**

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

|                        |     |    |
|------------------------|-----|----|
| =====                  |     |    |
| Approved for Reporting | Yes | No |
|                        |     |    |
| =====                  |     |    |

KAUSHIK NANUBHAI MAJITHIA  
 Versus  
 STATE OF GUJARAT & ORS.

=====

Appearance:  
 DHRUVIN P BHUPTANI(8295) for the Applicant(s) No. 1  
 MS ARCHANA U AMIN(2462) for the Respondent(s) No. 3  
 MR. KM ANTANI, APP for the Respondent(s) No. 1,2

=====

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

**Date : 07/09/2026**

**JUDGMENT**

1. By way of this application, the applicant has invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), inter alia, praying to quash and set aside the FIR being C.R. No. II-3055/2018 dated 20.04.2018, registered with Khadiya Police Station, District Ahmedabad, for the offence punishable under Section 30(B) of the Ancient Monuments and Archaeological Sites and Remains Act, 2010.

2. The facts of the case on hand are that, despite there being a

specific embargo on construction within a 300-metre range of the protected monuments in the Khadiya area, the applicant herein commenced construction of a house within 100 metres of the protected monument, namely, Rani Chippri Masjid, without obtaining any permission from the Archaeological Department. Despite notice having been served upon him, the applicant completed the construction in defiance of the same and thereby committed the alleged offence, for which the FIR in question came to be lodged against the applicant.

3. Heard learned advocate for the respective parties and perused the material on record.

4. Learned advocate for the applicant would submit that the applicant was served with a notice under Section 264 of the GPMC Act, inter alia, contending that the property, being a house, was in a dilapidated condition and that the applicant was accordingly required to carry out necessary repairs for the purpose of security and safety.

5. It is further submitted that, with a view to getting the property in question enlisted again in the new list of heritage properties of the Ahmedabad Municipal Corporation, the applicant carried out renovation, repairs and/or reconstruction of the existing structures and has not raised any new construction on the site.

6. It is further submitted that the notice dated 14.12.2016 issued by the Archaeological Department, i.e. Respondent No.3 herein, was duly replied to by the applicant by communication

dated 17.01.2017, categorically stating therein that no new construction had been raised by the applicant and that only renovation and repair work had been carried out. It is submitted that, pursuant to the notice issued under Section 264 of the GPMC Act by the Ahmedabad Municipal Corporation (“AMC”), no further communication whatsoever was made thereafter and, directly thereafter, the FIR in question came to be registered.

7. It is further submitted that, in no manner, the repair and renovation work undertaken by the applicant falls within the definition of “construction” as defined under Section 2(dc) of the Act and, therefore, invocation of Section 30(B) of the Act is wholly erroneous. Accordingly, it is urged that the present application may be allowed and the FIR in question may be quashed and set aside.

8. As against that, learned advocate Ms. Archana U. Amin for Respondent No.3, while opposing the present application, vehemently argued that, as per the provisions of the Act, prior permission is required to be obtained from the Department for carrying out any construction or repair work if the property is situated in the regulated area. It is submitted that no such permission whatsoever has been obtained by the applicant for carrying out such construction, which is in breach of the provisions of the Act.

8.1 It is submitted that the applicant, in defiance of the notice issued, made a false statement in the reply to the effect that no

construction had been carried out and, thereby, committed a breach of the provisions of the Act. It is, therefore, submitted that it cannot be said that no offence is made out as alleged in the FIR. Accordingly, it is urged that the present application, being devoid of merits, deserves to be rejected.

8.2 Learned advocate Ms. Archana U. Amin for Respondent No.3 further submits that, even otherwise, the case does not fall within the four corners of the principles laid down by the ***Hon'ble Supreme Court in the case of Bhajan Lal v. State of Haryana***. Under such circumstances, this Court ought not to exercise its discretionary jurisdiction in favour of the applicant. It is, therefore, urged that the present application be rejected.

9. Learned APP Mr. K.M. Antani for the respondent-State, while concurring with the submissions made by learned advocate for Respondent No.3, would submit that the discretionary jurisdiction under Section 482 of the Cr.P.C. is required to be exercised sparingly and with a view to preventing abuse of the process of law. He would further submit that, in the present case, a prima facie case is made out against the applicant, which is apparent from a bare perusal of the FIR. It is, therefore, urged that this Court may not exercise its inherent jurisdiction under Section 482 of the Cr.P.C. and interfere with the present proceedings.

10. Heard the learned advocates for the respective parties and perused the material on record.

11. For analysing the case on hand, it would be apposite to refer to the decision of the **Hon'ble Supreme Court in the case of State of Haryana v. Bhajan Lal and Others, 1992 Supp. (1) SCC 335**, wherein, in paragraph 102, the Hon'ble Supreme Court has enumerated certain categories of cases by way of illustration wherein the inherent jurisdiction under Section 482 of the Cr.P.C. may be exercised, either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. For ready reference, paragraph 102 of the said decision reads 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 Article 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 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.”*

12. If the facts of the case on hand are considered in the aforesaid context, it is the case of the complainant that the present applicant, in breach of the provisions of the Act as well as the notification regulating the area, undertook construction work in violation of the provisions of the Act and thereby committed an offence punishable under Section 30(B) of the Act. In the aforesaid backdrop, it would be apposite to refer to the definition of “construction” as provided under Section 2(dc) and “repair and renovation” under Section 2(m) of the Act, would be relevant which reads as under:

*(2dc) “construction” means any erection of a structure or a building, including any addition or extension thereto either vertically or horizontally, but does not include, any reconstruction, repair and renovation of an existing structure or building or, construction maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar conveniences, or the construction and maintenance of works meant for providing supply of water for public or the construction or maintenance, extension, management for supply and distribution of electricity to the public; or provision for similar facilities for publicity.*

*(2m) “repair and renovation” means alterations to a per-*

*existing structure or building, but shall not include construction or re-construction.*

13. **Repair vs. Construction:** The law is well-settled that "repair" or "maintenance" implies restoration of a structure to its existing state without altering its load-bearing framework, footprint, or cubic content. The undisputed photographic evidence on record establishes that the Petitioner did not add any floor area, alter the building line, or raise the height of the building. The work executed falls squarely within the scope of permissible maintenance and restoration.

14. **Duty to Ensure Public Safety:** The Municipal Corporation had issued an official notice declaring the premises dilapidated and unsafe. The Petitioner acted in compliance with statutory safety obligations to prevent structural collapse. Prosecuting an occupant for executing basic safety repairs mandated by a local authority under threat of public hazard would be opposed to the constitutional guarantees under Article 21.

15. **Domain Competence:** Vague assertions of "structural change" in an FIR, without technical foundation, cannot form the basis of criminal prosecution. Police authorities lack the technical expertise to decide architectural and structural parameters. Where the material on record conclusively demonstrates mere restoration within the existing framework, subjecting the Petitioner to a criminal trial after nearly nine years serves no legitimate legal purpose.

16. The contention of the Respondents that prior permission is an absolute, non-negotiable prerequisite under Section 20 even for non-structural, emergency repairs is unsustainable in the context of criminal prosecution. The statutory scheme under Section 20 of The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (herein after referred as AMASR Act for the sake of brevity) uses the expression "may apply". While the regulatory process contemplates prior clearance for planned civil alterations, failing to obtain prior administrative sanction for emergency wall stabilization—executed strictly to avert an immediate structural collapse—does not automatically convert a non-structural repair into a penal offense under Sections 30A/30B.

17. The penal provisions of a regulatory statute cannot be read in isolation to compel a citizen into a state of structural peril. When a statutory Municipal Safety Notice explicitly identifies a dilapidated wall posing a threat to human life, carrying out immediate safety restoration constitutes compliance with statutory safety obligations and an exercise of the fundamental right to safety guaranteed under Article 21 of the Constitution of India. The argument that the applicant made a "false statement" by stating no construction had been carried out is legally flawed and proceeds on a basic misconstruction of statutory terms. The prosecution has equated "repair/renovation" with "construction." Under Section 2(dc) of the AMASR Act, "construction" mandates an addition, expansion of footprint, increase in height, or erection of a new structural framework. The Petitioner's reply to the department—stating that no fresh construction was

undertaken—is fully substantiated by the undisputed "before and after" photographs on record, which confirm that the horizontal perimeter, structural boundary, and height of the premises remain completely unchanged. Replacing worn-out wooden fittings, painting, and applying brick masonry within the existing framework to stabilize a crumbling wall constitutes "restoration," not "construction." Therefore, the Petitioner's reply was factually and legally truthful, and no element of deception or mens rea exists.

18. Thus, the registration of the FIR fails to appreciate the absence of mens rea (criminal intent) on part of the Petitioner. The acts complained of were executed strictly pursuant to a statutory Safety Notice issued by the Municipal Corporation under the Provincial Municipal Corporations Act, requiring immediate abatement of a public hazard posed by a dilapidated wall. Action taken under statutory compulsion and to avert an immediate threat to life and public safety cannot be attributed with criminal intent or penal guilt under Section 30B of The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (herein after referred as AMASR Act for the sake of brevity).

19. The Respondent-Authority acted mechanically and in gross violation of administrative principles by lodging the FIR without considering the Petitioner's written reply dated 17.01.2017, which was submitted prior to the FIR along with the Municipal Corporation Notice. The investigating agency failed to verify whether any structural change occurred or to conduct a

technical assessment before invoking penal machinery, rendering the initiation of criminal proceedings arbitrary, premature, and an abuse of the process of law.

20. The allegations in the FIR, even if taken at face value, fail to disclose the essential ingredients of an offense under Section 30A/30B of the AMASR Act. The work executed was strictly confined to emergency stabilization, replastering, replacing wooden fittings, and masonry repair of an existing wall without adding load-bearing pillars, raising height, or expanding the horizontal footprint. The work constitutes 'renovation/repair' and falls outside the statutory definition of 'construction' under Section 2(dc) of the Act. Consequently, no penal offense is made out on the face of the record.

21. In the result, the present application is allowed. The FIR being C.R. No. II-3055/2018 dated 20.04.2018, registered with Khadiya Police Station, District Ahmedabad and all consequential proceedings arising thereof are hereby quashed and set aside. Rule is made absolute.

MOHD SAIF ULLAH

**(P. M. RAVAL, J)**