

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 8320 of 2022**

RAHUL BABULAL PUROHIT & ANR.
Versus
STATE OF GUJARAT & ANR.

Appearance:

MR MAHESHKUMAR K PUROHIT(10627) for the Applicant(s) No. 1,2
MRS YOGINI V PARIKH(2163) for the Respondent(s) No. 2
MR. ROHAN N. RAVAL, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL**Date : 16/06/2026****ORAL ORDER**

1. The applicants are before this Court to quash and set aside the FIR dated 26.11.2018 being CR No.Part-II/117/2018, registered with Sector 7 Police Station, Gandhinagar, for the offences punishable under Sections 188 and 120-B of the Indian Penal Code (for short "IPC") as well as under Section 66-E of the Information Technology Act, 2000 (for short "IT Act").

2. It transpires that FIR came to be lodged against the present applicants by one Mr. Bhautikbhai Govindbhai Patel – respondent No.2 herein, mainly alleging that he was informed by invigilator – Umeshbhai R. Rathod that in Block No.13, one of the candidates was taking photographs on his mobile phone and sending it outside, pursuance to which the complainant along with Ilaben went to Block No.13 and took the candidate to the management's room, and asking his name, he said that his name is Hardik Babulal Purohit resident of



Sahyog Residency, Devpura, Palanpur. seating at Seat No.101000585 and was having mobile phone with him that of Redmi Note 4, and has also clicked photographs of question paper and sent the said photographs through WhatsApp on mobile No.97140 92793; asking whose mobile number was that, he has informed that it was his brother Rahul Purohit's mobile number to which the photographs of question paper were send. Thus, FIR came to be lodge for offence punishable under Section 188 and 120B of the IPC and Section 66-E of the It Act.

3. Learned advocate Mr. Maheshkumar K. Purohit for the applicants would submit that no court can take cognizance of offence punishable under Sections 188 of the IPC in view of the barred under Section 195 of the Criminal Procedure Code, except for the complaint in writing by the public servant in this regard. Learned advocate would further submit that sending of question papers through WhatsApp to his brother would also not attract Section 66-E of the IT Act.

4. Learned advocate Mr. Jayswal on behalf of learned advocate Mrs. Yogini V. Parikh for the original complainant would submit that the GPSC has made certain instructions published which categorically prohibits carrying of mobile phone, and since it is breach of said instructions which falls within the four corners of Section 188 of the IPC, however, learned advocate could not draw



the attention as to how offence would attract Section 66-E of the IT Act.

5. Learned Additional Public Prosecutor would fairly concede that neither Section 188 of the IPC nor Section 66-E of the IT Act would be attracted, and inasmuch as Section 188 since there is bar of Section 195 of the Cr.P.C., only private complaint is to be filed and not an FIR.

6. Be that as it may, the facts remain that the applicants herein were *prima facie* found to have sent question paper through WhatsApp outside the examination center, more particularly, the candidate – applicant No.2 to his brother Rahul – applicant No.1. However, the instructions published by the GPSC cannot be said to be promulgation attracting Section 188 of the IPC, which provides as under:

“188. Disobedience to order duly promulgated by public servant —

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple



imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

7. Thus, on reading of the aforestated Section, what has been provided by this Section is that the public servant lawfully empowered to promulgate such order, and if such order is promulgated, any persons is directed to abstain from such act, or to take certain order with certain property in his possession or under his management, disobey such directions would attract the penal provisions of Section 188. However, what has been pointed out by the learned advocate for the original complainant is to the effect that the GPSC has given instruction to the candidates attending the exam as, what should be done and what should not be done, this would not fall within the four corners of Section 188 of the IPC being a promulgation of an order. Assuming for a moment, if said instructions are to be treated as promulgation of an order which squarely fall within the four corners of Section 188 of the IPC then considering the bar of seeking cognizance under Section 195 of Cr.P.C., Section 188 of the IPC is required to be quashed and set aside. More particularly, in view of the judgment delivered by this Court in case of ***Govartdhandas Thakoresdas Asrani vs. State of Gujarat in Criminal Misc. Application No.24632 of 2015.***



However, considering the facts on hand, it cannot be said that Section 188 of the IPC was intricately woven with the other offences that the other offences do not stand alone inasmuch as invocation of Section 188 of the IPC *prima facie* seems to be incorrect, and assuming for the sake of arguments as noted hereinabove is also invoke the rest of the FIR still stands without the support of Section 188 of the IPC, and therefore, what has been quashed and set aside is Section 188 of the IPC and not the entire FIR.

8. Section 66-E of the IT Act, reads as under:

“66E. Punishment for violation of privacy.—Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

Explanation. - For the purposes of this section-

- (a) “transmit” means to electronically send a visual image with the intent that it be viewed by a person or persons;*
- (b) “capture”, with respect to an image, means to videotape, photograph, film or record by any means;*
- (c) “private area” means the naked or undergarment clad genitals, public area, buttocks or female breast;*
- (d) “publishes” means reproduction in the printed or electronic form and making it available for public;*
- (e) “under circumstances violating privacy” means circumstances in which a person can have a reasonable*



expectation that;-

*(i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or
(ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.”*

9. However, on the facts on hand, what has been sent by the applicant No.2 to applicant No.1 is the photograph of the question paper captured on mobile phone, thus, the act of sending photograph through WhatsApp to his brother cannot be termed as an act of intentionally or knowingly capturing, publishing or transmitting the image of a private area of any person, so as to attract Section 66-E of the IT Act, thus, the provisions of Section 66-E being not attracting, the same is also required to be quashed and set aside.

10. In view of the above, the impugned FIR qua Section 188 the IPC and Section 66-E of the IT Act against the present applicants are quashed and set aside. However, the FIR itself may be proceeded qua any other offences that may deemed fit to the investigating officer in the facts of the case, but these two Sections from the FIR are quashed and set aside.

11. Interim relief stands vacated. Rule is made absolute to the aforesaid extent. Direct service is permitted.

NITIN MAKWANA

(P. M. RAVAL, J)