

HIGH COURT OF GUJARAT**PHILLIPS CARBON BLACK LIMITED & 8 OTHER(S)***Versus***REGIONAL OFFICER BHUJ & 1 OTHER(S)****Date of Decision:** 30 September 2021**Citation:** 2021 LawSuit(Guj) 5401**Hon'ble Judges:** [Gita Gopi](#)**Eq. Citations:** 2022 2 GLR 1522**Case Type:** Special Criminal Application**Case No:** 236 of 2009**Subject:** Civil, Constitution, Criminal, Environment & Pollution, Forest**Acts Referred:**[Constitution Of India Art 226](#)[Code Of Criminal Procedure, 1973 Sec 482](#)[Environment \(Protection\) Act, 1986 Sec 19, Sec 16, Sec 3\(3\), Sec 2\(a\)](#)**Advocates:** [Nandish Y Chudgar](#), [Nanavati Associates](#), [Amit N Patel](#), [Monali Bhatt](#)**Cases Referred in (+): 9****Gita Gopi, J.**

[1] The petitioners are before this Court under Section 482 of the Criminal Procedure Code and under Section 226 of the Constitution of India with a prayer to quash and set aside the Criminal Case No.1385 of 2008 pending before the Court of learned JMFC, Mundra, Kutch as well as to quash and set aside the summons dated 16.01.2009 issued by the learned JMFC in the said case.

[2] It is stated by the petitioners that the petitioner no.1- Company is registered under the Companies Act, 1956, having the registered office at Kolkata and Mumbai and the company is engaged in manufacturing carbon black having its factories located at (I) R.N.Mukherjee Road, Durgapur, West Bengal (ii) Karimugal, Kochi, Kerala and (iii) N.H. No.8, G.I.D.C. Plot No.1, Palej, Gujarat. It is stated that the company was desirous of installing another factory at village Mokha, Taluka Mundra, District Kutch.

[3] The allegations against the petitioner is in respect of non-compliance of the notification dated 14.09.2006 issued by the Ministry of Environment & Forests for the purpose of obtaining prior environmental clearance in context of Clause II of the said notification at the proposed site at Mundra. It is stated that as per the notification dated 14.09.2006, the appropriate government had mandated to obtain prior environmental clearance in respect of new projects and / or activities and / or construction work and / or land by the project management in accordance with the categories earmarked in the notification. It is stated by the petitioner that their project at Mundra falls under category A and for the purpose of obtaining prior environmental clearance the procedures as laid down is required to be followed. The petitioners had applied on 31.05.2007 to the appropriate authority for obtaining environmental clearance for the installation of new carbon block manufacturing plant and co-generation of power plant at Mundra, District Kutch, Gujarat.

[4] Learned advocate for the petitioner Mr.Nandish Chudgar submitted that pursuant to the said application, the expert appraisal committee discussed and finalized the draft terms of reference during its 73rd meeting held on 24.10.2007. Pursuant there to letter on 17.12.2007, was issued conveying the petitioner company the Terms of Reference for carrying out environmental impact assessment status. Appropriate procedures were followed and same was intimated to the concerned department. On 23.05.2008, public hearing was held at GPCB, Mundra and vide letter dated 29.05.2008 the petitioner company submitted final environmental impact assessment / environmental management plan and public hearing report requesting for environmental clearance to its proposed project in view of the notification dated 14.09.2006.

[5] Mr.Chudgar, learned advocate stated that on 19.08.2008, environment clearance notification was given by the appropriate government and No Objection Certificate / Consent to establish was issued by GPCB on 17.12.2008.

[6] Mr.Chudgar, learned advocate for the petitioners submitted that prior to the issuance of summons on 16.01.2009 towards the complaint filed by the respondent no.1, the company was in receipt of No Objection Certificate/ Consent to Establish issued by the respondent no.1 and the said fact was not brought to the notice of the learned JMFC, had it been so, the learned JMFC would not have taken cognizance of the matter. It is also stated that no vicarious liability gets attracted against the Directors and further contended that the complaint is without any application of mind and all the accused to the complaint, Chairman, Managing Director and all the Directors have been mechanically roped in the matter without any iota of evidence to specify whether they are incharge of day to day activities or affairs of the company or are responsible for the conduct of the business of the company.

[7] Mr.Nandish Chudgar, learned advocate for the petitioner, referring to the notification dated 14.09.2006 from the Ministry of Environment and Forests, referred to the procedures to be undertaken by an establishment, for the environmental clearance from the Central Government. Mr.Chudgar, learned advocate stated that as per the notification after the public hearing in the close proximity to the sites conducted by the Gujarat Pollution Control Board, or any other concerned authority of the Union Territories so as the case may be, in specified manner forwards the proceedings to the regulatory authority concerned within forty five days of the request to the effect from the applicant. In a case where the State Pollution Control Board or the Union Territory Pollution Control Committee concerned does not undertake and complete the public hearing within the specified period or does not convey the proceedings of the public hearing within the prescribed period directly to the regulatory authority concerned, the regulatory authority shall engage another public agency or authority which is not subordinate to the authority to complete the process within a period of forty five days.

[8] Mr.Chudgar, learned advocate referring to provisions for Grant or Rejection of Prior Environmental Clearance (EC), stated that the regulatory authority shall have to consider the recommendation of Expert Appraisal Committee (EAC) or State Level Expert Appraisal Committee (SEAC) concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or the State Level Expert Appraisal Committee as the case may be and as provided in an event such a decision of the regulatory authority is not communicated to the applicant within the period specified of forty five days as applicable, the applicant may proceed as if the environment clearance as sought for is granted by the regulatory authorities in terms of the final recommendation of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

[9] Mr.Chudgar, learned advocate stated that here in this case, the petitioner applied for obtaining the environment clearance on 31.05.2007, meeting of the Expert Appraisal Committee was held as per the communication dated 17.12.2007 from 24.10.2007 to 26.10.2007 and on 17.12.2007, letter was issued to the petitioner regarding the terms of the reference for carrying out the environment impact assessment status and according to the provision of the public hearing at Mundra, was held at GPCB on 23.05.2008. The petitioner company finally submitted the environment impact assessment/ environment management plan and public hearing report on 29.05.2008 which was received on 30.05.2008. Thus, Mr.Chudgar, learned advocate stated that the date of expiry of forty five days would be 14.07.2008, and thus as per the provisions made in the notification the environment clearance certificate is deemed to have been granted.

[10] Mr.Chudgar, learned advocate submitted that on 30.07.2008, the visit of the Officer of GPCB found objections to certain alleged preliminary construction work undertaken on the site which as per the Officer of GPCB it was flouting the conditions, which amounts to the breach of the condition of the notification which Mr.Chudgar, learned advocate stated was not in consonance to the provisions made in the notification since on 14.07.2008, the environment clearance certificate was deemed to have been granted. Mr.Chudgar, learned advocate further stated that on 19.08.2008 the environment clearance was given by the appropriate authority to the petitioner and relying on the same, No Objection Certificate was issued by GPCB on 17.12.2008, Mr.Chudgar, learned advocate submitted that if that fact is taken into consideration then the very initiation of the Criminal Complaint would become bad in law, since nothing was brought to the notice of the concerned authorities of any act of the petitioners, to be considered as violation of the terms of notification.

[11] Mr.Chudgar, learned advocate stated that there is no allegation of any environment pollution by the petitioners or the company. Referring to the judgments in case of [Pepsi Foods Ltd. And Another V/s Special Judicial Magistrate](#), 1998 5 SCC 749, in case of [S.M.S. Pharmaceuticals Ltd. V/s Neeta Bhalla](#), 2005 8 SCC 89, in case of [K. Srikanth Singh V/s North East Securities Ltd and Another](#), 2007 12 SCC 788, in case of [State \(NCT OF DELHI\) V/S. Rajiv Khurana](#), 2010 11 SCC 469 and in case of [Moosa Raza V/s State of Gujarat](#), 2009 SCCOnLineGuj 2204, submitted that the proceedings against the Directors of the company would entail them criminal liability. Such process by the Court should be only after considering the role of each of the directors, as penal provisions under the Environment (Protection) Act, 1986, would create vicarious liability thus, Mr.Chudgar, learned advocate submitted that the provision ought to have been strictly construed. A cursory averment in the complaint that the Directors arraigned as accused are in-charge of and responsible for the conduct of the business without specifying the roles of the directors is a clear abuse of process of law.

[12] Countering the argument, Mr.Amit Patel, learned advocate appearing for the respondent no.1 stated that on 30.7.2008, the officers of the GPCB visited the site and at the time of the visit, they found construction work being carried out in the premises at the unit and accordingly, a visit report was prepared and since it was found that, prior to the Environmental Clearance certificate, the petitioners had started the construction and therefore, the Board initiated the criminal proceeding against the Company and the Directors, under Section 19 of the Environmental (Protection) Act, 1986, before the JMFC, Mundra.

[13] Mr. Patel submitted, relying on the judgment of [U. P. Pollution Control Board Vs. M/s. Mohan Meakins Ltd.](#), 2000 CrLJ 1799. Mr. Patel submitted that, in cases relating

to environmental pollution, all the persons who were in-charge of the company or are responsible for the actions of the company can be prosecuted.

[14] It is submitted that, all the accused Nos.2 to 10 are the Directors of the accused No.1- Company and they are jointly and severally responsible for the day to day affairs of the Company and, therefore, the complaint has been lodged against all of them. Mr. Patel submitted that, the Company could not initiate any construction activity without getting Environment Clearance as per 2006 notification and therefore, under Section 16 of the Environmental (Protection) Act, 1986 the Company as well as every person, who at the time of the offence are in-charge of or responsible to the Company for the conduct of the business of the Company are liable to be proceeded.

[15] The visit report of the respondent Board at the unit M/s Phillips Carbon Black Ltd., Vill: Mokha (Nr.Vadala), Mundra, Dist: Kutch was on 30.07.2008 at 19:50 hours. The Board contacted Vicky Vyas, the reference of the visit was T.C / KUTCH C 108/8/ 14742 dated 28.05.2008. The officer of the Board at the time of the visit, found the construction work on the premises, which has been noted in the report, which says thus:

"With respect to above mentioned Ho letter, we the undersigned visited above mentioned unit on 30-07-2008. At the time of visit construction work within the premises of the unit of following activities is found to be going on:

- Warehouse Water collection pond
- Silo for semi finished goods
- Air Cool Condenser & Boiler
- Bag Filter foundation
- Import feed stock storage tank
- Foundation work of Dryer unit.

It is learnt from the contacted person that the unit has already given final presentation at the MOEF for its Environmental Clearance (EC) and the EC is awaited."

[16] The notification of the Central Government dated 14.09.2006, mandates obtaining the prior Environmental Clearance in respect of new projects or activities or expansion/ modernization of existing projects for activities listed in the schedule to the notification entailing capacity additions and change in process and or technology to be

undertaken in any part of India, from Central Government, or as the case may be, by the State level Environment Impact Assessment Authority duly constituted by the Central Government under Sub-section (3) of Section 3 of the Environment (Protection) Act, 1986. Such exercise is in accordance to the procedure specified in the notification.

[17] The notification provides for the requirement of prior Environmental Clearance from the concerned authority in accordance to categorization of projects and activities, where Expert Appraisal Committee of the Central Government shall undertake the process of screening, scoping and appraise in category 'A'. Screening, scoping, public consultation and appraisal are the four stages in Prior Environmental Clearance process for new projects.

[18] Under clause 8, the provision is made for Grant or Rejection of Prior Environmental Clearance (EC), which reads thus:

"(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant.

The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and

conveyed to the applicant by the regulatory authority concerned within the next thirty days.

(iii) In the event that the decision of the regulatory authority is not communicated to the applicant within the period specified in sub-paragraphs (i) or (ii) above, as applicable, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned.

(iv) On expiry of the period specified for decision by the regulatory authority under paragraph (i) and (ii) above, as applicable, the decision of the regulatory authority, and the final recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be public documents.

(v) Clearances from other regulatory bodies or authorities shall not be required prior to receipt of applications for prior environmental clearance of projects or activities, or screening, or scoping, or appraisal, or decision by the regulatory authority concerned, unless any of these is sequentially dependent on such clearance either due to a requirement of law, or for necessary technical reasons.

(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice.

[19] The provision made under clause 8 lays down that the regulatory authority shall have to consider the recommendation of the EAC / SEAC and convey decision to the applicant within 45 days of the receipt of the recommendation of Expert Appraisal Committee or the State level Expert Appraisal Committee concerned. Here, in this case, the meeting of the Expert Appraisal Committee was held between 24-26.10.2007. Letter was issued to the petitioner regarding the terms of the reference for carrying out environment impact assessment status on 17.12.2007, and the public hearing was held on 23.05.2008. On 29.05.2007, petitioner company submitted final environment impact assessment / environment management plan and public hearing report on 29.05.2008, which was received on 30.05.2008. Sub-clause (3), lays down that, in an event the decision of the regulatory authority is not communicated to the applicant within the period specified in sub clause (i) as is applicable in the present

matter of clause (8) the said provision permits the applicant to proceed as if the Environmental Clearance sought has been granted.

[20] The act and conduct of the petitioners in regard to the proposed project was regulated by the provisions made in the notification and, therefore, since within 45 days as mandated, the physical approval was not received, the provision would permit the petitioner to consider that the Environmental Clearance is deemed to have been granted. Thus, under such interpretation of the provisions, any construction if at all is considered to have been done, is within the permissible authority of the provision made in the notification. The said provision under clause 8 do permit the petitioner - Company to consider that the decisions of the regulatory authority has been in affirmative for the Environmental Clearance which they had prayed for. The required process was undertaken. Thus, according to the record, on 15.07.2008, on expiry of 45 days from 30.05.2008, the petitioners would become entitled to consider that, the Environmental Clearance Certificate has been granted to them in terms of the final recommendations of the Expert Appraisal Committee. The Ministry of Environment and Forests, Government of India, had granted the Environmental Clearance on 19.08.2008, in the present matter.

[21] The perusal of the record shows that on 04.03.2009, it was observed by this Court, that there was no serious and willful breach of any terms and conditions of the notification and some ground work of preliminary nature was carried out. The activity which was observed by the board on 30.07.2008, would be considered as primary work which would not have caused any injury to the environment.

Section 2 (a) of Environment (Protection) Act, 1986 defines environment as under:

"In this Act, unless the context otherwise requires,-- (a) "environment" includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property; " and Environmental Pollution is explained under 2(c).

"2(c) "environmental pollution" means the presence in the environment of any environmental pollutant; "

[22] There is no allegation of any hazardous substance being handled on the site. The authority visiting the site has not stated of any such polluting articles present at the unit. The report does not suggest that the visiting officers had taken any sample of some water, soil or air for its analysis from environmental laboratories to specify or to conclude whether any environmental pollution had taken place at the unit. Environment (Protection) Act, 1986 has come in force to provide for the protection and improvement of the environment and the matters connected therewith. It was found

necessary to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India was one of the participant to take appropriate steps in improvement of human environment and thus it was found necessary to implement the decisions so far as related to protection and improvement of environment and the prevention of hazards to human being and other living creatures, plants and property. Nothing as found in the report of the officer, suggest that there was any environment hazard created on the unit. Further, the environment clearance issued by the appropriate authority to the petitioner and No Objection Certificate by the respondent board on 17.12.2008, further fortifies the fact that there was no such activity which had gone against the provisions of Environment (Protection) Act, 1986.

[23] Thus, there was no cause for the board to have assumed that there was breach of notification dated 14.09.2006 of Ministry of Environment and Forest. The Board had given impugned complaint on 23.10.2008, prior to that environment clearance was issued to the petitioner by the appropriate authority, the said fact has not been disclosed by the board in the complaint. Even after the present complaint, the very authority respondent board has given No Objection Certificate on 17.12.2008, if at all there was any breach of the notification dated 14.09.2006, the respondent authority would certainly have not issued the No Objection Certificate on 17.12.2008 to the petitioner company.

[24] The proceedings are against the companies and all the directors Section 16 of the Environment (Protection) Act, 1986, states as under:

"16. OFFENCES BY COMPANIES.-

(1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company,

such director, manager, secretary or other officer shall also deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation--For the purposes of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

[25] In the judgment which has been cited by learned advocate Mr.Patel in case of **U. P. Pollution Control Board (Supra)**, the apex Court has observed in para 12 that at the stage of issuing process, what is required to be looked into is whether there are allegations in complaint by which the managers or directors of the company can be proceeded against. In case of [Pooja Ravinder Devidasani V/s. State of Maharashtra and Another](#), 2014 16 SCC 1, while explaining the provision of Section 141 of the Negotiable Instruments Act, 1881, the Supreme Court quoted the observations of [National Small Industries Corpn. Ltd. V. Harmeet Singh Paintal](#), 2010 3 SCC 330 as under:

"13. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141."

[26] Here in this Case the unit was yet to be put under process, what has been observed by the officers of the board was a preliminary work which as stated was under deeming provision of having received the environment clearance such act would not have created any presumption of mental culpability. It is No vicarious liability can be drawn against the directors of the company where no specific allegations have been laid down of any such act by the directors. The basic purpose of deeming provision is

to allow the consequences to follow. Legal fiction is an assumption that something is true even though it may be untrue. Such an assumption is especially made in judicial reasoning to alter how a legal rule operates. Although, the word 'deemed' is usually used, a legal fiction may be enacted without using that word.

[27] Mr.Chudgar, learned advocate stated that the petitioner no.2, has passed away and petitioner no.3, 5 and 10 have resigned from the company. Specific averments are required to be made as Section 16 of the Environment (Protection) Act, 1986, clearly lays down that the person who are directly in-charge of and are responsible to the company for the conduct of the business of the company, they shall be liable to be prosecuted. Thus it becomes incumbent on the petitioner, to specify in the complaint, as to who of the directors are in-charge of the business or are having over all control of the day to day business of the company. Making the directors of the company liable for the offences committed by the company, there must be specific averments against the directors as to how and in what manner the directors was responsible for the conduct of the business of the company. No such specific averments have been made in the impugned complaint, the directors as shown in the compliant have not been linked by any of such activity as alleged by the board.

[28] Ms. Monali Bhatt, learned APP submitted that the petitioners were to follow the procedures and had to abide by the conditions for prior environmental clearance for their new project, thus, supporting the complaint filed by the GPCB- respondent no.1, it is submitted that no discretion can be exercise in this petition.

[29] In matters wherein the person is subject to criminal liability, summoning of accused is a serious matter and the learned Magistrate who passes the order of summons has to reflect in his order that he has applied his mind by examining the nature of allegation made in the complaint and evidence both oral and documentary in support of it. Since, the Magistrate is not a silent spectator, at the time of recording the preliminary evidence before summoning the accused, he is required to carefully scrutinize the evidence brought on record and he is also bound to put questions to the complainant and his witnesses to illicit answers to find out the truthfulness of the allegation or otherwise and then examine, if any offence is primarily committed by all or any of the accused. Such observation finds supports from the case of Pooja Ravinder Devidasani V State of Maharashtra reported in (2014) 16 SCC 1. Here taking into consideration the notification dated 14.09.2006, this Court does not find any offence committed by the company or the directors. The necessary process had been undertaken by the company. Environment clearance was given by the appropriate authority and No Objection Certificate was also granted by the respondent board.

[30] As is laid down "In case of [State of Haryana V. Bhajan Lal and others](#), 1992 AIR(SC) 604, the Apex Court formulated as many as seven categories of cases, wherein the extraordinary power under Section 482 could be exercised by the High Court to prevent abuse of process of the court. It was clarified that it was not possible to lay down precise and inflexible guidelines or any rigid formula or to give an exhaustive list of circumstances in which such power could be exercised.

In case of [State of Haryana V. Bhajan Lal and others](#), 1992 AIR(SC) 604, the Apex Court made the following observations:-

"8.1. In the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 guide in myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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."

[31] The continuation of the proceedings would be total hardship to the petitioners, as would lead them to face unwarranted trials, thus in view of the categories and principles laid down in case of State of Haryana (Supra), the Criminal Case No.1385 of 2008 pending before the Court of learned JMFC, Mundra, Kutch as well the summons dated 16.01.2009 issued by the learned JMFC in the said case and the proceedings initiated in pursuance thereof are quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

