NEUTRAL CITATION
2026:GUJHC:52391

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 8276 of 2024

FOR APPROVAL AND SIGNATURE:
HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
		NO

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DHARMENDRABHAI BABULAL GANDHI & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR RASESH H PARIKH(3862) for the Applicant(s) No. 1,2,3
MR.HEMANG H PARIKH(2628) for the Applicant(s) No. 1,2,3
MR DIPAN DESAI(2481) for the Respondent(s) No. 2
MR JAY MEHTA, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**
Date : 12/08/2026
JUDGMENT

1. The present application is filed for quashment of FIR being I-C.R. No.34 of 2004 registered with CID Crime, Gandhinagar Zone Police Station, Gandhinagar, for the offences punishable under Sections 406, 409, 420, 467 and 120B of the Indian Penal Code and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, as well as the charge-sheet filed by the Investigating Officer and all consequential proceedings arising therefrom, qua the present applicants.

2. Heard the learned advocate Mr. Parikh for the applicants and the learned advocate Mr. Desai for the respondent No.2 and the learned APP Mr.Mehta for the respondent-State.

3. At the outset, learned advocate Mr. Parikh for the applicants submits that the learned Special Judge, vide order dated 27.02.2025, deleted the offences under the Prevention of Corruption Act and transferred the case to the Court of the learned Chief Judicial Magistrate, Ahmedabad. The said order, produced by learned advocate Mr. Parikh, is ordered to be taken on record. Learned advocate Mr. Parikh further submits that, as per the allegations made in the impugned FIR, the present applicants, in connivance with the Bank Officer, had obtained a loan and thereafter failed to repay the same. It is submitted that the applicants have cleared all the dues payable to the Bank, pursuant to which a No Due Certificate dated 17.07.2010 came to be issued by Madhopura Mercantile Bank. It is further submitted that, since the Bank went into liquidation, as many as 80 FIRs came to be registered against different borrowers. This Court, while exercising powers under Section 482 of the Code of Criminal Procedure, has allowed the quashing petitions filed by several similarly situated borrowers vide orders dated 08.03.2019 passed in Special Criminal Application No.5238 of 2015 and allied matters, as well as order dated 22.09.2021 passed in Criminal Misc. Application No.199976 of 2020 and allied matters. It is submitted that, since the applicants have cleared the dues and in view of the judgments rendered by this Court in identical matters, continuation of the criminal proceedings would amount to an abuse of the process of law.

4. Learned advocate Mr. Desai, appearing for respondent No.2, does not dispute the fact that the complainant Bank has issued a No Due Certificate and that the applicants have cleared all the dues payable to the Bank. In that background, it is submitted that an appropriate order may be passed in accordance with law.

5. Learned APP Mr. Mehta appearing for respondent-State has opposed the present application.

6. Having considered the submissions advanced by the learned advocates for the respective parties and upon perusal of the allegations made in the impugned FIR as well as the material collected during the course of investigation, it emerges that the allegation against the present applicants is that they, in connivance with the Bank Officer, had availed loan facilities to the extent of Rs.4 Crore by producing forged documents. However, on a plain reading of the allegations in the impugned FIR, no specific allegation has been made that the present applicants had produced any forged documents. It further emerges that, during the course of investigation, offences under the Prevention of Corruption Act came to be added on the premise that the loan facilities had been sanctioned in connivance with the Bank Officer. Subsequently, the said offences came to be deleted vide order dated 27.02.2025 in view of the fact that the concerned Bank Officers, who were public servants, had expired during the pendency of the proceedings.

7. This Court has referred to the observations made by the

Coordinate Bench while passing the orders in identical cases arising from same Banks, wherein the borrowers had approached this Court seeking quashment of the FIR. The following observations are relevant for the purpose of deciding the present application:

> "32 Thus, prima facie, it appears that there is nothing on record to indicate that any forged or false document or fraudulent documents were utilised at the relevant point of time for the purpose of obtaining the loan with the connivance of the office bearers of the bank.
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> 33 I must concentrate on three main submissions canvassed by the learned counsel appearing for the Bank. According to the Bank, when the freehold land admeasuring 4,000 sq. mtrs. situated at Dadra Nagar Haveli was offered as a security, the first charge over the same was with the I.D.B.I. Bank. The materials on record indicate that in the loan application itself, there is a reference of the same. Such a fact was not suppressed by the accused persons. The second charge of the Madhavpura Bank was created. It is brought to my notice that the Bank itself had gone to the Registrar of Companies and had got their second charge registered. More importantly, there are no dues payable to the I.D.B.I. since 2004. 'No Due Certificate' has been issued by the I.D.B.I. It is pointed out that a loan with the export credit facility of Rs.85 lakh was, thereafter, availed from the Bank of Baroda with the N.O.C. from the Madhavpura Mercantile Cooperative Bank and the same has also been repaid and 'No Due Certificate' has been issued by the Bank of Baroda. It is not in dispute that as on date, there is only one charge and that charge is of the Madhavpura Bank.
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> 34 The second allegation of the Bank is that one property situated at Mumbai, although was not of the ownership of

the accused persons, yet the same was offered as a security. It appears that the accused persons have leasehold rights over the said property. The Bank carried out the necessary valuation in 2015 with the consent of the accused persons. The said property is a rented property under the provisions of the Maharashtra Rent Control Act. The property occupied as "Handi" (PAGHDEE) has monetary value for the holder as well. So far as the third allegation is concerned, the same is with regard to one property at Bombay, which came to be sold by the accused persons with the permission of the Bank. This property was sold way back in the year 2006 on account of financial crunch in the business. The learned senior counsel appearing for the accused persons submitted that the accused persons had to keep the company running, as there were 200 workers employed in the said company. If this allegation is accepted, then there is no any illegality or irregularity as regards availing of the loan in the year 1998.

35 Let me clarify one relevant aspect of this litigation. Prima facie, it appears that everything was within the knowledge of the Bank at the relevant point of time. However, the case of the Bank, as on date, is that the management of the Bank was also in collusion, and therefore, all are guilty of criminal conspiracy. In my view, it would be too much to say that a criminal conspiracy was hatched for the purpose of obtaining the loan in 1996. All these problems arose for the Bank as the Bank went in liquidation.

36 Let me also refer to the decision of this Court relied upon by the learned counsel appearing for the accused persons in the case of Shri Shailesh 1. Patwari and others vs. the State of Gujarat and others [Criminal Misc. Application No.9249 of 2004 decided on 14 February 2007]. It was also a case with similar facts and allegations. A learned Single Judge of this Court, while

quashing the criminal proceedings, it observed as under:

"17. There is also no dispute that the loans are duly secured against hypothecation of plant and machinery and book debts and by creation of charge on the immovable properties. As per the registered Valuer's Report, the valuation of the plant and machinery is Rs.67,84,000/-, which is produced at Annexure-L The book debts of the firm are to the tune of Rs.70,00,000/- which is evident form the extract of the balance sheets produced at Annexure-M. The property of land and building at Plot no.25/1, Phase III, GIDC, Naroda is valued at Rs.47,46,575/, the value of the office premises is about Rs.7 lacs. The respondent no.2 bank is in possession of the aforesaid properties.

18. On the facts of the case, what can be inferred is that the petitioners have availed of loan from the respondent no.2 bank, but due to circumstances beyond the control of the petitioners, they could not pay the installments after some time. The bank has therefore filed Lavad Suit for recovery of the outstanding amount which is pending.

19. The bank has also taken over the securities. The bank has further issued notice under the Securitization Act for recovery of the amount. Thus, the bank has already proceeded to recover the amount in question. Therefore, it is an accepted fact that there is a civil dispute between the petitioners and the respondent no.2 bank. Now, the question is, whether on the very same set of facts, the bank was justified in filing criminal case against the petitioners or not.

20. In this regard it is required to be established that the petitioners ere willful defaulters or whether they have tried to cheat the respondent no.2 bank in any manner whatsoever. In this connection it is required to be noted that in the Lavad Suit the respondent no.2 bank has stated on oath that the petitioners have availed of loans after following the procedure and on execution of necessary documents.

21. In the notice issued by the respondent no.2 bank under

the Securitization Act, reference has been made to immovable properties of the petitioners on which there is a charge of the Bank and action is proposed to be taken on the basis that they are secured assets of the bank. Having stated so in the Lavad suit, the respondent no.2 bank cannot take a contrary stand in the criminal proceedings to the effect that the petitioners have availed of the loans contrary to RBI norms and without adequate security.

22. As regards bonafides of the petitioners are concerned, the petitioners had made payments upto 1995. It is their contention that on account of various factors including closure of chemical business in Gujarat on account of a public interest litigation regarding pollution, and various other factors including recession, the petitioners faced serious financial crisis. There was also a fire at the factory in which the petitioners suffered huge loss. After the financial crisis, as the record shows, the petitioners have made serious efforts to settle the amount. Various communications produced on record shows that the petitioners were genuinely pursuing the issue of settling the matter with the bank.

23. The petitioners have also proposed one time settlement. Therefore, looking to the particular facts of the case, it is seen that the petitioners were pursuing the matter and showed no inclination to abandon the payment or to defraud the bank. Apart from that substantial amount has been paid by the petitioners even after the hank has gone into liquidation In fact there was settlement between the parties in pursuance of which a deduction of 10% from the grass receipts of the petitioners was implemented by the Bank. Therefore I am of the view that prima facie there is no element of criminal breach of trust, cheating or criminal conspiracy so as to attract provisions of 406, 409, 420 and 120B of IPC

24. From the above facts it is evident that even according to the respondent no. 2 bank the dispute is a civil dispute for which a Lavad Suit has been filed. Notice under the provisions of Securitization Act has been issued for recovery

of amount. On the very same set of facts the complaint has been filed, for non-payment of the loan amount.

25. The petitioners have paid substantial amount and the bank will be able to recover the remaining outstanding amount if any by appropriate civil proceedings. On the facts of the case nothing is pointed out to establish the alleged offence as stated in the complaint. I am therefore of the view that no useful purpose is likely to be served by allowing the criminal prosecution to continue and it would not be in the interest of justice to proceed against the petitioners who are bonafide borrowers. Looking to the fact that the dispute is of civil nature, the conduct of the petitioners and their intention to repay the amount in question and the also the fact that substantial payment has been made, I am of the view that this is a fit case to quash the complaint as the complaint does not establish a prima facie offence.

26 It would be relevant to refer to a decision of the Apex Court in the case of M/s. Indian Oil Corporation V. M/s. NEPC India Ltd & ors., wherein the observations made in Para 10 of the judgment are relevant, which reads as under, "10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

27. In the case of Alpic Finance Ltd. Vs. P. Sadasivan and another, reported in AIR 2001 SC 1226, it is held that since there are no allegations that respondent made any willful representation, no allegation that there was fraud or

dishonest inducement and in view of the fact that respondent has paid substantial payment as per hire purchase agreement, no element of misappropriation or cheating and the quashing of proceedings was proper and legal. Para 10 of the said decision as under:

"...Here the main offence alleged by the appellant is that respondents committed the offence under section 420 IPC and the case of the appellant is that respondents committed the offence under section 420 IPC and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, parties entered into a valid lease agreement and the grievance of the appellant, is that the respondents failed to discharge their contractual obligations. In the complaint there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his deht, he does not necessarily evade the debt by deception.. ..."

28. In the case of Ram Biraji Devi and Another Vs. Umesh Kumar Singh and Another, reported in (2006)6 SCC 669 it is held that even if the allegations made in the complaint are accepted to be true and correct, the appellants cannot be said to have committed any offence of cheating or criminal breach of trust, neither can any guilty intention be attributed to them nor can there possibly be any intention on their part to deceive the complainant. It was further held that the averments of the complaint and the statements of the complainant and his witnesses recorded by the

Magistrate would amount to civil liability inter se the parties and not criminal liability and therefore cognizance taken by the Magistrate was clearly an abuse of the process of court.

29. In the case of Superintendent and Remembrancer of Legal Affairs, west Bengal V. Birendra Chandra Chakravarty, reported in AIR 1974 SC 290 it is held that where there was long and intimate relation between the accused and the complainant and there were numerous transactions between them it would be difficult to determine the extent to which the complainant was duped or persuaded by mis-representation to part with rights in certain properties alleged to be the subject matter of breach of trust. It was a dispute of an essentially civil nature to be decided between the parties before any question of criminal liability could be adjudicated upon. Therefore, it is held that criminal liability cannot be adjudicated upon where the dispute is of civil nature.

30. In the case of S.N Palanitkar V. State of Bihar reported in AIR 2001 Supreme Court 2967 in para 27 it is held as under

"....The approach and consideration while exercising power and jurisdiction by a Magistrate at the time of issuing process are to be in terms at the time of issuing process are to be in terms of sections 200 to 203 under chapter IV of CRPC having due regard to the position of law explained in various decisions of this court, and whereas while exercising power under section 482 of Cr. PC the High Court has to look at the object and purpose for which such power is available to the High Court to give to any order under the Cr. P.C or to prevent abuse of process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under section 482. Cr. PC should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in te hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilised for any oblique motive. When a person approaches the High Court under section 482, Cr. PC to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred...."

31. It is required to be noted that recently a trend has been noticed that even for recovery of ordinary transaction of loan the machinery of criminal prosecution is misused by the banks, obviously with a view to bring undue pressure upon the creditor though there are enough measures provided under the the law. On the facts of the case, and in view of the civil proceedings already initiated, it is evident that the dispute is of civil nature and no criminal action is warranted.

32. In the premises aforesaid, this petition is allowed. The C.R. No.207 of 2004 registered with Madhavpura Police Station by respondent no.2 herein for the alleged commission of offences punishable under sections 406, 409, 420 and 120-B of IPC is hereby quashed and set aside. Rule is made absolute accordingly. It is made clear that the present complaint has been quashed only on the basis of the special facts and circumstances of the case and this will not be treated as a precedent in any other case."

37. I may also refer to a very recent pronouncement of the Supreme Court in the case of Satishchandra Ratanlal Shah vs. State of Gujarat and another [Criminal Appeal No.9 of 2019 decided on 3rd January 2019], wherein the Supreme Court, while quashing and setting aside the judgment delivered by this Court has observed that mere failure to repay the loan amount, by itself, would not amount to cheating. The Supreme Court has taken the view that there has to be something in the complaint and other materials on record to prima facie indicate that the intention of the accused was to cheat the complainant right from the inception. I may quote the relevant observations as under:

"10 Before we analyse this case, it is to be noted that the criminal application preferred by the accused before the High Court was against the order of the Trial Court at the stage of framing of charges, wherein it is the duty of the court to apply its judicial mind to the material placed before it and to come to a clear conclusion that a prima facie case has been made out against the accused. An order for framing of charges is of serious concern to the accused as it affects his liberty substantially. Courts must therefore be cautious that their decision at this stage causes no irreparable harm to the accused.

11 Coming to the aspect of quashing of the charges, it is well settled that such exercise needs to be undertaken by the High Court in exceptional cases. It is also well settled that the framing of charges being initial stages in the trial process, the court therein cannot base the decision of quashing the charge on the basis of the quality or quantity of evidence rather the enquiry must be limited to a prima facie examination. [refer to State of Bihar vs. Ramesh Singh, 1977 CriLJ 1606).

12 Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with 406 of IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that the respondent no.2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

13 In this context, we may note that there is nothing either

in the complaint or in any material before us, pointing to the fact that any property was entrusted to the appellant at all which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 punishable under Section 406 of IPC. Hence the learned Magistrate committed a serious error in issuing process against the appellants for the said offence. Unfortunately, the High Court also failed to correct this manifest error.

14 Now coming to the charge under Section 415 punishable under Section 420 of IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168). In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached the respondent no. 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the respondent no. 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

15 Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to Gian Singh v. State of Punjab, (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 of IPC."

38. In the overall view of the matter, I have reached to the conclusion that permitting the police to continue with the investigation on such allegations will be nothing, but a

gross abuse of the process of law. The Bank shall proceed against the accused persons for the recovery of the amount towards the difference so far as the 'One Time Settlement Scheme' is concerned. Ultimately, if the Bank succeeds before the Bombay High Court in the First Appeal filed against the award passed by the Arbitrator, then it goes without saying that the accused persons will have to make good the payment, of course, subject to their rights of further appeal. I take notice of the fact that the various properties mortgaged with the Madhavpura Bank as per the mortgage deed entered into with the bank at the time of taking the loan, one property being (E) freehold land admeasuring 4,000 sq. mt. in survey No.10/1, village: Khutali, Union Territory, Dadra Nagar Haveli, together with building and plant was valued at Rs.10,06,52,000/- as per the valuation report, which was undertaken by the bank at the relevant point of time. On the said property, a charge of Rs. 3 Crore was created and registered by the bank with the Registrar of Companies on 10th October 1998 at the time of sanctioning the loan. The said charge even today is subsisting and reflected in the Registrar of companies.

39 All the original documents including the Title Deed with regard to the property being five Galas situated in Gala Complex, Gala Industrial Estate, 2nd floor, Dumping Road, Mulud (West), Mumbai are with the bank even as on date.

40 Mr. Raju, the learned counsel appearing for the Bank submitted that the Madhavpura Mercantile Cooperative Bank, at one point of time, was one of the finest Banks in the cooperative sector. However, it is the gross illegalities and irregularities committed by the management in sanctioning of the loans in favour of different parties, which, ultimately, led to its debacle. He pointed out that in the year 2000, the Bank went in liquidation and the only people responsible for the debacle of the Bank are the

office bearers at the relevant point of time. What is submitted by Mr. Raju, may be true. However, this Court may only say that the Bank would be justified in initiating criminal prosecutions against any defaulting party, if there are cogent materials to indicate that a large scale fraud was played upon in collusion or connivance with the office bearers. Instituting criminal prosecutions at random against all the defaulting borrowers would not be justified or sustainable in law. For the purpose of institution of criminal prosecution, there has to be something very gross and substantial. At the cost of repetition, I state that even while the Bank instituted arbitration suits, it was not in their mind to launch any criminal prosecution and this is evident from the pleadings in the plaints. Later, various criminal prosecutions came to be instituted against the defaulting borrowers including the office bearers of the Bank. The dispute as such has come to an end, except the First Appeal filed by the Bank before the Bombay High Court. It is clarified that the observations made by this Court in this judgment shall have no bearing at all so far as the First Appeal filed by the Bank against the award passed by the Arbitrator in favour of the accused persons is concerned. It goes without saying that the First Appeal would be decided on its own merits, and ultimately, if the Bank succeeds in the said First Appeal, then the accused persons will have to make good the balance amount.

41 In the result, all the writ applications succeed. The M. Cases Nos.7 of 2005, 6 of 2005, 2 of 2005, 3 of 2005 and 10 of 2005 registered with the Gandhinagar Zone Police Station are hereby quashed so far as the accused applicants are concerned. The criminal proceedings arising from all the above referred M. cases qua the other accused are concerned shall proceed further in accordance with law. Rule is made absolute.

42 In view of the final disposal of the main matter, the connected criminal miscellaneous application also stands disposed of.”

8. As observed by this Court herein-above, though allegations of criminal conspiracy have been made against the present applicants, it has emerged that, after the Bank went into liquidation, more than 80 FIRs came to be registered against various borrowers for non-payment of the loan amount. This Court has also referred to the No Due Certificate issued by the complainant Bank, which is reproduced hereinbelow:

TO WHOM SO EVER IT MAY CONCERN

This is to certify that M/s./Shri Dharnendra Agro. FCCD. Ind. Ltd. Address : AAyamBIL Bhavan, Parekh Mungal Street Shahpur Chakla, Ahmedabad enjoyed credit facilities for Rs. Four Crore 4,00,00,000/- (Rupees Four Crore Only) IH.404250. The said account is liquidated with interest on dt. 17/7/2010

The Madhavpura Mer. Co-op. Bank Ltd.
Sd/-
Officer/Br.Manager

9. Considering the overall circumstances of the case, particularly the No Due Certificate issued by the Bank, coupled with the fact that the offences under the Prevention of Corruption Act came to be deleted and that no material has been collected during the course of investigation to substantiate the allegation of forgery against the present applicants, this Court is of the opinion that continuation of the criminal proceedings would amount to an abuse of the process of law.

10. Resultantly, the present application is allowed. The FIR being I-C.R. No.34 of 2004 registered with CID Crime, Gandhinagar Zone Police Station, Gandhinagar, the charge-sheet filed pursuant thereto, Special Case No.17 of 2015 pending before the City Civil and Sessions Court, Ahmedabad, and all consequential proceedings arising therefrom are hereby quashed and set aside qua the present applicants.

(M. K. THAKKER,J)

M.M.MIRZA