NEUTRAL CITATION
2026:GUJHC:59326

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 5498 of 2015
With
R/SPECIAL CRIMINAL APPLICATION NO. 5306 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

==========

Approved for Reporting	Yes	No
	Yes	

==========

DULRAJ UTTAM CHAND JAIN
Versus
UNION OF INDIA & ORS.

==========

Appearance:
MR MIHIR JOSHI, LD.SR.ADV WITH MR HARDIK P MODH(5344) for the Applicant(s) No. 1
MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 2
MR ANKIT SHAH(6371) for the Respondent(s) No. 1
MR UTKARSH SHARMA. APP for the Respondent(s) No. 3

==========

CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 09/09/2026

COMMON ORAL JUDGMENT

1. Heard learned Senior Advocate Mr.Mihir Joshi with learned advocate Mr.Hardik P. Modh and learned advocate Mr.Pratik Y. Jasani for the petitioner in Special Criminal Application No.5498 of 2015 and learned advocate Mr.R.H.Rupareliya for the

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

petitioner in Special Criminal Application No.5306 of 2015 and learned advocate Mr.Ankit Shah, learned Additional Public Prosecutor Mr.Utkarsh Sharma and learned advocate Mr.Rajesh K. Kanani for the respective respondents.

2. **Rule**, returnable forthwith. Learned advocate Mr.Ankit Shah, learned Additional Public Prosecutor Mr.Utkarsh Sharma and learned advocate Mr.Rajesh Kanani waive service of notice of rule for and on behalf of the respective respondents.

3. Both these petitions are preferred challenging the order dated 3rd July, 2015 passed by the Trial Court, in Criminal

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

Misc. Application No.1135 of 2015 in ECIR No.ECIR/01/STSZO/2014, issuing the non-bailable warrants of arrest.

4. As the issue involved in these petitions are common, the same are heard analogously and are being disposed of by this common judgment. For sake of convenience, Special Criminal Application No.5498 of 2015 is treated as a lead matter.

5. The brief facts of the case are as under:

5.1. Two FIRs were registered on 11th April, 2014 and 13th April, 2014 at the instance of ICICI Bank relating to some fraudulent

Uploaded by () on www.taxcode.in Downloaded on : Sat Sep 26 12:14:31 IST 2026

remittance being made through the Bank without any actual imports.

5.2. The Assistant Director, Enforcement Directorate-respondent No.2 herein, registered a complaint on 17th April, 2014 on the basis of the said FIRs against 79 accused persons and supplementary complaint was filed against other 10 accused persons.

5.3. Though the petitioner was not related to or connected with the FIRs regarding scheduled offences for subsequent complaints, it is alleged that the respondent No.2 forcibly abducted the petitioner and forced him to sign on typed

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

statements, prepared and printed without even permitting the petitioners to read the same in the month of February, 2015.

5.4. The petitioner has filed various affidavits concerning the conduct of the respondent No.2. It is the case of the petitioner that the petitioner and his family had left for Rajasthan on 22nd May, 2015 and returned back on 7th June, 2015 and during the said period, summons were issued by the respondent No.2 upon the petitioner to remain present before him on 1st June, 2015, which was never served upon the petitioner as the petitioner was not available, as he was at Rajasthan. It is

Uploaded by () on www.taxcode.in Downloaded on : Sat Sep 26 12:14:31 IST 2026

not in dispute that the petitioner appeared before the respondent No.2 on earlier three occasions on 10th February, 2015, 16th February, 2015 and 24th February, 2015.

5.5. The respondent No.2 thereafter preferred an application before the Designated Court under Section 46 of the Prevention of Money Laundering Act, 2002 (for short 'the Act') read with Section 70 of the Code of Criminal Procedure, 1973 (for short 'the Code') for issuance of non-bailable warrant against the petitioner for the offences punishable under Section 4 of the Act.

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

5.6. The learned Sessions Judge and the learned Designated Special Judge vide impugned order dated 3rd July, 2015 issued the non-bailable warrant against the petitioner. Being aggrieved by the impugned order, the petitioner has preferred this application.

6. This Court (Coram:Hon'ble Mr.Justice J.B.Pardiwala) by order dated 22nd September, 2015 issued notice and granted ad-interim relief staying the operation of the impugned order by restraining the respondents from taking any coercive steps in Criminal Misc. Application No.1135 of 2015 in ECIR No.ECIR/01/STSZO/2014.

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

7.1. Learned Senior Advocate Mr.Mihir Joshi for the petitioner submitted that the impugned order is beyond the jurisdiction, scope and powers of the learned Special Designated Judge in absence of any complaint or any case pending before the Court. It was submitted that merely because the petitioner could not appear in response to the summons issued by the respondent No.2, the respondent No.2 could not have filed an application under Section 46 of the Act read with Section 70 of the Code.

7.2. Referring to the provisions of Sections 46, 50, 63 and 65 of the Act read with Section 4, 5, 70, 87 and 73 of the

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

Code, it was pointed out that the learned Trial Court has passed the impugned order of non-bailable warrant without application of mind and contrary to the provisions of the Act.

7.3. In support of his submissions, reliance was placed on the decision of the Hon'ble Punjab and Haryana High Court in case of ***Rakesh Kumar Goyal Versus Directorate of Revenue Intelligence*** reported in ***2024 SCC OnLine P&H 4291***, against which, the Special Leave Petition was dismissed by the Hon'ble Apex Court vide order dated 14th October, 2024.

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

NEUTRAL CITATION
2026:GUJHC:59326

7.4. Reliance was also placed on the decision of the Hon'ble Jharkhand High Court in case of ***Satyendra Singh Kushwah Versus State of Jharkhand and another*** reported in ***(2024) 121 GSTR 465 (Jharkhand)***.

8. So far as Special Criminal Application No.5306 of 2015 is concerned, learned advocate Mr.R.H.Ruparelia for the petitioner submitted that the petitioner has already appeared before the respondent No.2 in response to the subsequent summons issued, and his statements are recorded.

9. Learned advocate Mr.Rajesh Kanani for the respondent No.2 in Special Criminal

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

Application No.5306 of 2015 submitted that the respondent No.2 has preferred an application under Section 46 of the Act read with Section 70 of the Code only because the petitioners in both the applications were not responding and in order to secure their presence, the application was preferred by the respondent No.2.

10. Having heard the learned advocates for the respective parties and considering the facts of the case, it would be germane to refer to Section 46 of the Act and Section 70 of the Code, which read as under:

> "***Section 46 of the Act:*** *Application of Code of Criminal Procedure, 1973 to proceedings*

Uploaded by () on www.taxcode.in Downloaded on : Sat Sep 26 12:14:31 IST 2026

before Special Court

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor.
PROVIDED that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

Section 70 of the Code: *Form of warrant of arrest and duration.-*

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court

Uploaded by () on www.taxcode.in Downloaded on : Sat Sep 26 12:14:31 IST 2026

which issued it, or until it is executed."

11. Considering the above provisions, it is clear that though Section 46 of the Act refers to the application of Code of Criminal Procedure, 1973, Section 70 of the Code cannot be given a go-bye, which provides for form of warrant of arrest and duration.

12. It is a trite law that without there being any case registered before the Court, provisions of the Code of Criminal Procedure could not have been applied, merely to see that the summons issued by the respondent No.2 during course of investigation are complied with.

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

13. Admittedly, there was no case pending against the petitioners before the Special Court, which could have empowered the Court to issue a non-bailable warrant to secure the presence of the petitioners. The respondent No.2 was carrying out the investigation, and no case was registered against the petitioners before any Special Court and the only complaint, which was registered by the respondent No.2 against the petitioners, was under the provisions of the Act for investigation.

14. It is also pertinent to note that section 46 of the Act falls under Chapter VII of the Act containing Sections 43 to 47

Uploaded by () on www.taxcode.in Downloaded on : Sat Sep 26 12:14:31 IST 2026

for "Special Court" and for trial of scheduled offences under section 4 of the Act to be conducted by the Special Court. Section 46 of the Act is therefore applicable to proceedings before the Special Court. Hence, the respondent no.2 could not have made an application under Section 46 of the Act for issuance of non-bailable warrant for alleged non-compliance of summons issued by him.

15. In view of such facts, it would be necessary to refer to the decision of the Hon'ble Punjab and Haryana High Court in case of ***Rakesh Kumar (Supra)***, wherein in relation to provision of Customs Act, it is

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

held as under:

> *"8. There is merit in the contention of learned counsel for the petitioner. As is evident from Section 108 of the Customs Act, any Gazetted Officer of customs has the power to summon any person, whose attendance he consider necessary for the purposes as mentioned in the provision and similarly, he has the power to ask the concerned summoned person for production of certain specified documents or things as mentioned in the summons. In case, the concerned person, to whom notice under Section 108 of the Customs Act is issued, fails to comply with the summons, Section 117 of the Customs Act takes care thereof, inasmuch as it provides penalty for contravention of the said provision. No doubt that no specific provision is mentioned in the Customs Act to take action for violation of Section 108 of the Customs Act but Section 117 of the Customs Act clearly provides that any person*

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

contravening any provision of the Act or abetting any such contravention or failing to comply with any provision of the Act, with which it was his duty to comply and no express penalty is provided for such contravention or failure, shall be liable to be dealt with under the said provision i.e. by imposing a penalty upon him.

9. Section 174 and 175 of Penal Code, 1860 provides punishments for committing offences for non-attendance in obedience to an order from public servant or omission to produce document or electronic record to public servant by person legally bound to produce it. Had there been no provision like 117 in the Customs Act, obviously the concerned person to whom summons have been issued under Section 108 of the Customs Act, if fails to comply therewith, would have been guilty for committing an offence under Section 174 of 175 or both of the Penal Code, 1860, as the case may be but as Section 117 of the Customs Act, finds place

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

in a Special Act i.e., Customs Act, which is a complete code in itself providing for various violations, offences and penalties and the procedure etc., therefore, Section 174 & 175 of Penal Code, 1860 will have no application, in view of Section 4 & 5 of the Criminal Procedure Code which reads as under:

> *"4. Trial of offences under the Penal Code, 1860 and other laws. -*
>
> > *(1) All offences under the Penal Code, 1860(45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
> >
> > *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any*

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.-Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

10. In "General Manager, Telecom v. M. Krishnan (SC)", 2009 (5) BCR 501, telephone connection of respondent was disconnected for nonpayment of the telephone bill. Said respondent filed complaint before the Consumer Forum. It was held that said forum did not have jurisdiction, as there was special remedy in Section 7B of Telegraph

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

Act, regarding disputes in respect of telephone bills. Hon'ble Supreme Court held that special law overrides the general law and so, the order of Consumer Forum restoring the connection and imposing the penalty, was set aside.

11. In "Jabir Singh v. Vipin Kumar Jaggi" (2001) 4 Crimes 127, it was held by Hon'ble Supreme Court that although there was no conflict between powers exercised by the Court under Section 307 of the Code of Criminal Procedure and by the Government under Section 64 of the Narcotic Drugs and Psychotropic Substances Act, 1985, but even if such a conflict is assumed, Section 64 would prevail both on the ground that Act being a Special Act overrides the Criminal Procedure Code, which is a general Act and also because the later enactment must prevail over the earlier one.

12. As far as, "Saroj K Datta v. R.L. Thapliyal" (supra) & "Meera Kapoor v.

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

State" (supra) relied by learned counsel for the petitioner are concerned, in those cases, provisions of Section 108 and 117 of the Customs Act were not considered in the light of Section 4 & 5 of the Criminal Procedure Code and therefore, those authorities have no application to the case in hand.

13. Consequent to the entire discussion as above, it is held that impugned complaint as filed by the respondent against the petitioner seeking his prosecution Section 174 & 175 of the Penal Code, 1860, cannot be sustained. The said complaint (Annexure P1) and order dated 22.04.2015 (Annexure P-13) passed by learned Additional Sessions Judge, Ludhiana, upholding the summoning order dated 06.06.2012 of learned Chief Judicial Magistrate, Ludhiana (Annexure P-11), whereby petitioner has been summoned to face prosecution under Sections 174 & 175 of the IPC, are hereby quashed. However, complainant - respondent will be

Uploaded by () on www.taxcode.in Downloaded on : Sat Sep 26 12:14:31 IST 2026

at liberty to proceed against the petitioner as per Section 117 of the Customs Act, 1962. Disposed of accordingly."

16. The Hon'ble Jharkhand High Court also in case of ***Satyendra Singh Kushwah (Supra)***, in similar facts, has held as under:

"*12. Section 70 of the CGST Act, 2017 speaks of power to summon persons to give evidence and produce documents and inquiry under the same will proceed under the provision of the Civil Procedure Code and only sections 193 and 228 of the Penal Code, 1860 is applicable in view of sub-section (2) of section 70 of the said Act.*

13. Section 125 of the CGST Act, 2017 speaks of general penalty to the tune of maximum Rs. 25,000 only and section 132 of the said Act, prescribes for punishment. It is an admitted case that no case under

Uploaded by () on www.taxcode.in Downloaded on : Sat Sep 26 12:14:31 IST 2026

sections 125 and 132 of the said Act is initiated against the petitioners.

14. The documents on record clearly suggest that summons have been replied, which was also entertained by the authority by way of granting time. Thus, it cannot be said that this is a case of noncompliance of summon issued by the authority concerned.

15. So far as the amendment in the complaint petition is concerned, the court is not required to answer the same in view of the judgment relied by Mr. P.A.S. Pati in the case of S.R. Sukumar.

16. In view of the above facts and considering that the summons were replied, which were entertained by the authority concerned and it cannot be said that the petitioners have not complied with the summons, issued by the authority concerned and further there are procedure prescribed under the CGST Act, 2017 for penalty under

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

section 125 which restricted to a fine of Rs. 25,000 only and none of the failure prescribed in section 132 of the said Act is the subject matter of the present cases and further section 70 of the said Act speaks of procedure to be adopted for summoning, that will in accordance with the Code of Civil Procedure and further considering that the reply to the summons were entertained by the authority concerned, to allow to continue the proceeding under section 174 of the Penal Code, 1860 against the petitioners will amount to abuse of process of law."

17. Applying the above dictum of law and considering the provisions of Chapter VII of the Act for "Special Court", the impugned order dated 3rd July, 2015 passed by the Special Court issuing non-bailable warrant in absence of any pending

Uploaded by () on www.taxcode.in Downloaded on : Sat Sep 26 12:14:31 IST 2026

proceeding before it, in Criminal Misc. Application No.1135 of 2015 in ECIR No.ECIR/01/STSZO/2014 would be without jurisdiction and cannot be sustained and the same is hereby, quashed and set aside.

18. It goes without saying that the petitioners shall abide by the summons, if any, issued by the respondents in accordance with law. It also goes without saying that the contentions of both the sides, with regard to the merits are kept open, as this Court has not gone into the merits of the matter.

19. The petitions are accordingly allowed.

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026

Rule is made absolute to the aforesaid extent. No orders as to cost.

(BHARGAV D. KARIA, J)

PALAK

Uploaded by () on
www.taxcode.in
Downloaded on : Sat Sep 26 12:14:31 IST 2026