



**Reserved On : 03/11/2025**  
**Pronounced On : 17/11/2025**

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET  
 ASIDE FIR/ORDER) NO. 15613 of 2015**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE J. C. DOSHI Sd/-**

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Approved for Reporting	Yes	No
	Yes	

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M/S GOPAL GLASS WORKS LTD THRO. MANAGING DIRECTOR  
 & ORS.

Versus

UNION OF INDIA & ORS.

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**Appearance:**

MR. BHADRISH S RAJU(6676) for the Applicant(s) No.  
 1,2,3,4,5,6,7,8,9

MS HARDIKA VYAS(11450) for the Respondent(s) No. 3

NOTICE SERVED for the Respondent(s) No. 1

MR CHINTAN H. DAVE, APP for the Respondent(s) No. 2

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**CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**

**CAV JUDGMENT**

1. The instant petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”), by the petitioners praying to quash and set aside the Criminal Complaint bearing Nos. C.C. No. 1686 of 2013 registered with Chief Judicial Magistrate, Kadi (Former C.C.



No.1524 of 1994) by quashing issuance of the summons/process in a complaint, for offences under Sections 468 and 120B of the Indian Penal Code (hereinafter referred to as “IPC”) read with Section 9 of the Central Excises and Salt Act, 1944 (hereinafter referred to as the “Act of 1944”).

2. By way of the petition, the following relief has been prayed by the petitioners:-

*“7. (a) To allow this petition,*

*(b) To issue appropriate writ, order or direction quashing and setting aside the impugned Complaint (Annexure A) being Criminal Case no. 1686/2013 registered with the Court of Chief Judicial Magistrate, Kadi (earlier CC no 1524/1994 in the Court of Chief Judicial Magistrate, Mehsana) along with the summons dated 12.03.2015 issued to the petitioners and all further proceedings therein.*

*(c) Pending admission, hearing and final disposal of this petition, to stay further proceedings of the impugned Complaint (at Annexure A) being Criminal Case no. 1686/2013 registered with the Court of Chief Judicial Magistrate, Kadi (earlier CC no. 1524/1994 in the Court of Chief Judicial Magistrate, Mehsana);*

*(d) To pass any other and further orders as may be deemed fit and proper to this Hon'ble Court.”*

3. The facts, in nutshell, required to decide the issue are as under:-

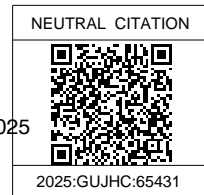
3.1 The petitioner No.1 is a private limited company incorporated under the Companies Act, 1956 and is engaged, inter alia, in the manufacturing of figured and rolled glass of Tariff Item 23A of erstwhile schedule to the “Act of 1944”, till



27.2.1986 and thereafter, under Chapter 70 of First the Schedule to the Central Excise Tariff Act, 1985. The Petitioner No.2 is the Chairman from 24.07.1978, petitioner No.6 is Managing Director of Petitioner No.1 from 01.01.2005, and petitioner Nos.3, 5, 6, 7, 8 and 9 were the Directors of the petitioner No.1 company at the relevant point of time except petitioner No.4, who was neither a Shareholder nor Employee of the company at the relevant point of time. He became Director of the Petitioner No.1 on 27.12.2011.

3.2 That it is the case of respondent Nos.1 and 3 that, on 11.05.1985, the officers of Central Excise Department (Preventive Wing) H.Q., Ahmedabad, searched the factory premises of the petitioners and allegedly found that the petitioners were writing different thickness in their packaging slips than the thickness mentioned in the production record and on further inquiry, it was further found that no measuring apparatus was used since last month as it was sent for repairs.

3.3 That the then Collector of Central Excise & Customs, Ahmedabad, vide his order dated 15.02.1990, held that the petitioners have evaded duty of Rs.25,79,685.35/- being the duty on the amount realised by the way of contingency bills aggregating to Rs.3,31,062.78/- from March, 1984 to May, 1984 and the said duty was ordered to be recovered under proviso to sub-section (1) of the then Section 11-A of the "Act of 1944". He further confiscated the goods and imposed fine of Rs. 10,000/- in lieu of confiscation and imposed Rs. 5,00,000/- as penalty under Rule 173Q of the erstwhile Central Excise Rules, 1944. The then Collector of Central Excise held that the petitioners by



not declaring true thickness of the glass suppressed the assessable value in the price list and committed fraud, mis-declaration and suppression of facts, in order to evade payment of duty to cheat government.

3.4 That being aggrieved by the said order dated 15.2.1990, the petitioner filled an appeal to the Customs, Excise and Gold Control Appellate Tribunal (now Customs, Excise and Service Tax Appellate Tribunal) Principal Bench, New Delhi.

3.5 That the Appellate Tribunal, initially granting stay on 05.12.1990, vide its order dated 18.02.1995 set aside the said order dated 15.02.1990 and remanded the proceedings to the then Collector of Central Excise, Ahmedabad for reconsideration.

3.6 That pursuant to the said final order of the Appellate Tribunal, the Commissioner, Central Excise and Customs, Ahmedabad, vide his order dated 30.09.1997 confirmed the demand of Rs.3,31,062.78/-for mis-declaration of thickness and Rs.25,79,658.35/- as additional consideration towards contingency charges and imposed penalty of Rs. 5,00,000/-. That, aggrieved by the said order of the Office of Commissioner, Central Excise and Customs, Ahmedabad, the petitioner No. 1 filed an appeal before the Appellate Tribunal at Mumbai on 22.01.1998.

3.7 That the Appellate Tribunal, Mumbai, by its order dated 30.04.1998 ordered to deposit Rs. 10,00,000/- under Section 35F of "Act of 1944", which was deposited by the petitioners in two instalments viz. Rs.5,00,000/- on 25.05.1998 and Rs.5,00,000/- on 24.08.1998.



3.8 That pending the hearing of the said appeal, a scheme known as '*Kar Vivad Samadhan Scheme, 1998*', was introduced by the Government. The scheme was in force between 01.09.1998 and 31.01.1999. Briefly, the scheme permitted the settlement of "tax arrears", as defined in Section 87(m) of the Finance Act. The said scheme was mainly in relation to indirect tax enactment mainly provided for the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty determined as due or payable under that enactment as on the 31.03.1998 but remaining unpaid as on the date of making a declaration under Section 88.

3.9 That the petitioners in fact received the details of the scheme in question from the concerned Commissioner and the petitioners, with a view to prevent further litigation and to settle the dispute, applied under the said scheme by filing declaration in Form 18 on 30.12.1998 to settle the arrears of the tax.

3.10 That the Office of the Commissioner of Central Excise, Ahmedabad, issued certificate dated 19.02.1999 in Form 2B to the petitioners under Section 90(1) of the said Finance Act determining the Rs.9,55,361/- payable by the Petitioners under scheme which were to be paid within 30 days from 19.02.1999. The petitioners deposited, on 16.03.1999, Rs.9,55,361/-vide Challan No.139 in Bank of Baroda, Ahmedabad. The said amount was deposited within time prescribed in the said certificate date.



3.11 That the petitioners were thereafter issued certificate dated 30.06.1999, by the office of Commissioner of Central Excise, Ahmedabad, certifying the full and final settlement of tax arrears of the petitioner No.1 under section 90(2) and Section 91 of the Finance (No.2) Act, 1998 under the '*Kar Vivad Samadhan Scheme, 1998*' in Form-3 dated 30.06.1999. The Commissioner of Central Excise having jurisdiction over the petitioners' factory granted immunity, subject to the provisions contained in the scheme, from instituting any proceedings for prosecution for any offence under "Act of 1944" or from the imposition of penalty under the said Act, in respect of the matters covered by the present petitioners.

3.12 That in view of the petitioners having paid the tax arrears under '*Kar Vivad Samadhan Scheme, 1998*', the Appellate Tribunal, vide its order dated 10.02.2004, after recording that the petitioner No.1 has obtained satisfaction under provisions of '*Kar Vivad Samadhan Scheme, 1998*', held that the appeal filed by the petitioner No. 1 against the order of the Commissioner of Central Excise does not survive and was dismissed for statistical purposes.

3.13 That after more than a decade of the abovementioned events, in 2015, the petitioners were shocked and surprised to receive the summons issued to them in C.C. No.1686/2013, which was not known to the petitioners to have been originally filed in the Court of Chief Judicial Magistrate, Mehsana in 1994, which was subsequently transferred to the Court of Chief Judicial Magistrate, Kadi, on 01.01.2013 and registered as C.C.



No.1686/2013. The summons were issued on 12.03.2015 and was for the first time served upon only on petitioner No. 1.

3.14 That the the original Accused Nos.3, 6, 8 have expired, and by the time the summons dated 12.03.2015 was served upon the petitioner No. 1 for the first time on 19.04.2015, which was returnable on 19.04.2015, the petitioner No. 1 appeared before the Hon'ble Court on 21.04.2015 by way of this petition.

4. Mr. Bhadrish S. Raju, appearing for the petitioners, made two-fold submissions.

4.1 He firstly submitted that among the petitioners, petitioner No.1 is M/s. Gopal Glass Works Ltd., petitioner No.2 is the MD and rest of the petitioners are the Directors of the Gopal Vilas Private Limited. The company is mainly engaged in manufacturing of figured and rolled glass sheets.

4.2 He has further submitted that the officers of the Central Excise Department's (Preventive Wing) visited the unit on 11.05.1985 and carried out the various checks at the premises of the factory and on verification, they found that the petitioners were writing different thickness in their packaging slips as compared to the thickness mentioned in the production record. On inquiry, it was learnt that the company had no measuring apparatus. Therefore, he would submit that some discrepancy was found in the thickness of the figure and rolled glasses than what is mentioned in the production report.

4.3 Learned Advocate Mr. Bhadrish S. Raju referred to the private complaint, which is at Annexure-A, and submitted that



the difference of thickness is entirely stated in schedule on page 2 of the said complaint.

4.4 He would further submit that the Collector of Central Excise and Customs, Ahmedabad by his order dated 15.02.1990 held that the petitioner - Company and its Directors have evaded the excise duty of Rs.25,79,685.35/-. The Collector of Central Excise passed such order along with the order of confiscation and penalty. The Collector believed that the petitioners have suppressed the accessible value in the price list by misdeclaring the thickness of the glass.

4.5 He would further submit that being aggrieved by the order of the Collector of Central Excise and Customs, Ahmedabad, the petitioners have filed appeal in the Customs, Excise and Gold Control Appellate Tribunal. The appellate Tribunal, after hearing both the parties, partly set aside the order of the Collector and remanded the proceedings to be decided afresh, as per the order at Annexure-D(Colly.) to the petition.

4.6 He would further submit that, in a remanded matter, the Collector again reiterated his previous decision and believed that the excise duty in the tune of Rs.25,79,685.35/- has been evaded. Therefore, the Collector has reconfirmed and passed his earlier order again.

4.7 Aggrieved by the said order by the Office of Commissioner of Customs, Ahmedabad (Collector), DNR appeal was preferred before the Appellate Tribunal. Learned advocate submitted that during the pendency of the appeal, the Government has floated a scheme known as '*Kar Vivad Samadhan Scheme, 1998*' and the





scheme was permitting settlement of the tax arrears and ultimately, the petitioner company has settled the tax arrears and paid the tax, as fixed, and as per the conditions of the *Kar Vivad Samadhan Scheme, 1998*, has also withdrawn his appeal from the appellate Tribunal.

4.8 Learned advocate Mr. Bhadrish S. Raju, in the aforesaid factual backdrop, submitted that the impugned complaint filed by the respondent No.3, essentially, is based upon the civil dispute raised between the party in regard to evasion of tax duty, but since petitioners have opted to pay the tax under the *Kar Vivad Samadhan Scheme, 1998*, petitioners should be given immunity from being prosecuted and yet, private complaint is filed in derogation of the *Kar Vivad Samadhan Scheme, 1998*. Therefore, while relying upon the judgement in the case of ***Hira Lal Hari Lal Bhagwati v. CBI, New Delhi***, reported in **(2003) 5 SCC 257**, learned advocate submits that, as far as offence under Section 9 of the “Act of 1944” is concerned, it is to be believed that petitioners have got immunity from being prosecuted as they entered into the *Kar Vivad Samadhan Scheme*, and paid tax as assessed.

4.9 In so far as offence under Sections 468 and 120B of the “IPC” is concerned it is submitted by the learned advocate Mr. Bhadrish S. Raju that maintaining a log sheet in the manufacturing unit mentioning different thickness than the thickness of the glass manufactured does not fall within the realm or definition of the forged document, in support of his



argument, he referred to the judgement in the case of ***Mohammed Ibrahim v. State of Bihar***, reported in **2009 (8) SCC 751**.

4.10 Lastly, learned advocate Mr. Bhadrish S. Raju submitted that a bare reading of the private complaint indicates that it does not make any allegations of the personal involvement of the petitioners Nos. 3 to 9. It is further submitted that the petitioners Nos. 3 to 9 are the Directors and in absence of any averments as regards to their personal involvement in the commission of the offence, they are not required to be prosecuted for the act and misdeed done by the company. Therefore, he submitted that the petitioners Nos. 3 to 9 should not stand for the trial.

Mainly on the above submissions, learned advocate Mr. Bhadrish S. Raju submitted that the complaint be quashed along with the issuance of the process in the Criminal Case and consequentially, to dismiss the Criminal Case against the petitioners.

5. Ms. Hardika Vyas, learned advocate appearing for the Central Excise Department, would submit that the Criminal Case against the petitioners for the offence under Sections 468 and 120B of the “IPC” read with Section 9 of the “Act of 1944” was filed in the year 1994, much prior to launching of the *Kar Vivad Samadhan Scheme, 1998*. Therefore, petitioners cannot claim any immunity from the prosecution, retrospectively. She refers to the Annexure-F and Annexure-G to submit that none of the conditions stated therein are permitting to apply for the *Kar*



*Vivad Samadhan Scheme, 1998*, retrospectively. She further submits that the *Kar Vivad Samadhan Scheme, 1998* granted immunity from instituting any proceedings for the prosecution for any offence under any direct tax or indirect tax from the date of the scheme, which came into force from the first day of September, 1998. Therefore, she submitted that the prosecution, which is launched much prior to *Kar Vivad Samadhan Scheme* came into force, cannot be ground to quash complaint, on the reason that the petitioners have paid the arrears of tax.

Upon the aforesaid submissions, learned advocate Ms. Vyas submits to dismiss this petition.

6. Learned APP Mr. Chintan H. Dave, adopted the arguments of learned advocate Ms. Vyas and in addition thereto, he submitted that even the offence under Section 468 of the “IPC” is *prima-facie* made out, as petitioner company has made a false declaration before the Government authority to evade the tax. Thus, putting up a false declaration before the taxing authority itself is attributing the offence, and therefore, it cannot be said that the offence under Section 468 of the “IPC” is not made out. Thus, he submitted to dismiss the petition.

7. I have heard learned advocate Mr. Bhadrish S. Raju for the petitioners, learned advocate Ms. Hardika Vyas for the Central Excise Department and learned APP Mr. Chintan H. Dave for the State.

7.1 This Court has paid the anxious thoughts to the rival submissions made by the learned advocates for both the sides. Adverting to the arguments of learned advocate Mr. Bhadrish S.



Raju, the only appealing argument is that the petitioners Nos. 3 to 9, being the Directors of M/s. Gopal Glass Works Ltd. cannot be prosecuted without making any allegations of their personal involvement in the commission of the offence, as principle of Vicarious Liability is unknown to the criminal jurisprudence. In this regard, examining the averments made in the Criminal Complaint at Annexure-A on page 3, except the name of company and MD, no role of the other petitioners are mentioned and there are no allegations of their personal involvement are levelled in the petition. In **Sanjay Dutt & Ors. v. The State of Haryana & Anr.**, reported in **2025 INSC 34**, the Supreme Court discussed the principle of Vicarious Liability and whether it applies to the criminal prosecution, relevant para 12 and 13 are reproduced as under:-

*“12. At the same time, wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. When it comes to penal provisions, vicarious liability of the managing director and director would arise provided any provision exists in that behalf in the statute. Even where such provision for fastening vicarious liability exists, it does not mean that any and all directors of the company would be automatically liable for any contravention of such statute. Vicarious Liability would arise only if there are specific and substantiated allegations attributing a particular role or conduct to such director, sufficient enough to attract the provisions constituting vicarious liability and by extension the offence itself.*

*13. It is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so. Thus, an individual who has perpetrated the commission of an offence on behalf of a*

*company can be made an accused, if the statute provides for such liability and if there is sufficient evidence of his active role coupled with criminal intent. The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening criminal liability on an officer of a company, there is no presumption that every officer of a company knows about the transaction in question.”*

8. Yet in another judgment in the case of **Maharashtra State Electricity Distribution Company Limited and Anr. v. Datar Switchgear Limited and Ors.**, reported in **(2010) 10 SCC 479**, wherein the Chairman of the Maharashtra State Electricity Board was made an accused for the offence under Sections 192 and 199 respectively read with Section 34 of the “IPC”, the Apex Court in para 30 held as under:-

*“30. It is trite law that wherever by a legal fiction the principle of vicarious liability is attracted and a person who is otherwise not personally involved in the commission of an offence is made liable for the same, it has to be specifically provided in the statute concerned. In our opinion, neither Section 192 IPC nor Section 199 IPC incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint. It would be profitable to extract the following observations made in S.K. Alagh: (SCC p.667, para 19)*

*‘19. As, admittedly, drafts were drawn in the name of the company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for*

*any offence committed by the company itself.’ (Emphasis supplied)”*

9. In the aforesaid circumstances, prosecution in order to prosecute the Directors of the Company requires to prove their active personal involvement or knowledge in the offence or a statutory provision that imposes liability upon them. The criminal liability cannot be based on designation alone, but has to be on the role they played in the company's affairs, as such the direct personal involvement is needed. Since the companies are distinct legal entities separate from their Directors and shareholders, plethora of judgments have consistently upheld the Doctrine of Separate Legal Personality, except if specific statutory provision or circumstances, warrant lifting the corporate veil. The principle ensures that the liability for corporate acts remain confined to the companies unless the Director is directly implicated by the statute or personal involvement. Thus, there is a need for statutory clarity and evidentiary recourse when criminal liability is attributed to the Directors.

10. In ***Pooja Ravinder Devidasani v. State of Maharashtra and others***, reported in **2014 (16) SCC 1**, the Apex Court asserted that only those persons, who were in charge and responsible for the conduct of the business of the company at the time of commission of offence will be liable for criminal action. In the aforesaid circumstances, since the necessary averments in the complaint is missing, which may *prima-facie* establish the personal involvement of the petitioners of any specific statutory provision, which says that the Director can be

held liable for the Company's action, the prosecution against the petitioner Nos. 3 to 9 launched or started on the principle of Vicarious Liability is legally not permissible.

11. As far as submission of learned advocate Mr. Bhadrish S. Raju that, petitioners have accepted the *Kar Vivad Samadhan Scheme, 1998* and paid the arrears of tax by foregoing their right to appeal. Hence, petitioners should not be prosecuted on the same facts are concerned, let me note that the *Kar Vivad Samadhan Scheme, 1998* provides immunity to initiate prosecution only under direct tax or indirect tax, immunity is not provided for any other offences. Apt to note that immunity is provided from institution of fresh Criminal Case.

In para 4.15 of the *Kar Vivad Samadhan Scheme, 1998*, it is stated as under:-

*"4.15 The scheme shall not be applicable in Customs and Excise Cases involving the following categories of cases / persons:*

- a) in a case where prosecution for any offence punishable under any provisions of any indirect tax enactment has been instituted on or before the date of filing of the declaration under Section 88 in respect of any tax arrear in respect of such case under such indirect tax enactment.*
- b) in a case where show cause notice or a notice of demand under any indirect tax enactment has not been issued.*
- c) in a case where no appeal or reference or writ petition is admitted and pending before any appellate authority or High Court or the Supreme Court or no application for revision is pending before the Central Govt. on the date of declaration made under Section 88.*

*d) to any person in respect of whom an order of detention has been made under COFEPOSA Act, 74 subject to certain conditions about order of detention being satisfied,*

*d) to certain other categories of persons prosecuted for offence punishable under IPC, FERA, 73, NDPS Act, 85, TADA, 87, Prevention of Corruption Act 88 etc. (Please see Section 95 for details)”*

12. Chapter IV of the *Kar Vivad Samadhan Scheme, 1998* and Section 89 states that, this *Kar Vivad Samadhan Scheme, 1998* came into force on the 1<sup>st</sup> day of September, 1998. Section 94 thereof reads as under:-

*“94. The designated authority shall, subject to the conditions provided in section 93, grant immunity from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment, or from the imposition of penalty under any of such enactments, in respect of matters covered in the declaration under section 91.”*

13. Thus, it is abundantly clear that this *Kar Vivad Samadhan Scheme, 1998* operates prospectively and not retrospectively. It provides the immunity from instituting any proceedings for prosecution for any offence under the direct tax or indirect tax enactment.

14. Recollecting the facts, the prosecution against the M/s. Gopal Glass Works Ltd. and its MD has been launched in the year 1994. The Criminal Case is filed on 07.04.1994. It was much prior to launching of the *Kar Vivad Samadhan Scheme, 1998*. Therefore, merely petitioner accepted the *Kar Vivad Samadhan Scheme, 1998* and paid the tax, for which the prosecution has been launched against him in *priori*, it cannot





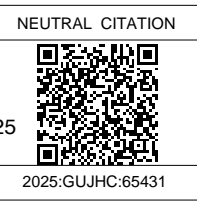
be said that petitioners have been given a immunity from the prosecution, which is initiated much prior to the launching of the scheme. Therefore, there is no substance in the submission of the learned advocate Mr. Bhadrish S. Raju.

15. A judgment in the case of ***Hira Lal Hari Lal Bhagwati (Supra)*** would not apply in the facts of the case. In that case, after petitioner entered into compromise under the *Kar Vivad Samadhan Scheme, 1998* and paid the arrears of tax, the prosecution was launched thereafter. In the entire circumstances, the Honourable Supreme Court quashed the complaint as the immunity was permitted under the *Kar Vivad Samadhan Scheme, 1998*.

16. Lastly, the submission that no offence under Section 468 of the “IPC” is made out as recording false particulars in log book, which belongs to the petitioners does not attract the term ‘forged documents’, I am totally not impressed by such submission, as petitioner has made a declaration before the tax authority and claimed thickness of the glass to claim a particular tax regime and evaded the tax duty, and therefore, *prima-facie* making of false declaration before Government authority to claim the benefit attracts the definition of ‘forged documents’, as defined under Section 464 of the “IPC”. In view of this reason, this submission is also not accepted.

17. For the foregoing reasons, I pass the following order:-

i) The petition is allowed qua petitioner Nos.3 to 9, namely petitioner No.3 – Devang Krishnavadan Taktawala, petitioner



No.4 – Kalpesh Dhirajlal Sheth, petitioner No.5 – Shah Harishchandra Keshavlal, petitioner No.6 – Mayurbhai Jayantilal Shah, petitioner No.7 – Husaeni Akbarali Arsiwala, petitioner No.8 – Fakhruddin Jivaji Vakharia, petitioner No.9 – Nanavati Bakul Chandrakant. Accordingly, the prior issuance of the summons in private complaint as well as the private complaint being C.C. No. 1686 of 2013 registered with Chief Judicial Magistrate, Kadi (Former C.C. No.1524 of 1994) is hereby quashed and set aside qua them along with all other consequential proceedings.

ii) The petition qua petitioner No.1 – M/s. Gopal Glass Works Ltd. and petitioner No.2 – its MD, namely Jayantilal Jethalal Shah is dismissed.

Direct service is permitted.

**Sd/-**  
**(J. C. DOSHI, J.)**

*Raj*