

2014 (0) AIJEL-HC 231905

GUJARAT HIGH COURT

Hon'ble Judges: J.B. Pardiwala, J.

Narendra Maganbhai Patel Versus State Of Gujarat

CRIMINAL Miscellaneous APPLICATION (FOR QUASHING & SET ASIDE  
FIR/ORDER) No. 15941 of 2012 ; \*J.Date :- OCTOBER 9, 2014

- [CODE OF CRIMINAL PROCEDURE, 1973](#) Section - [482](#)
- [INDIAN PENAL CODE, 1860](#) Section - [405](#), [420](#), [465](#), [467](#), [471](#), [120B](#)

**Code of Criminal Procedure, 1973 - S. 482 - Indian Penal Code, 1860 - S. 405, 420, 465, 467, 471, 120B read with 114 - quashing of complaint - whether any case of the offence of forgery could be said to have been made out - held, no case of forgery worth the name could be said to have been made out by the respondent no. 2 original complainant - no case of cheating is also made out as alleged by the respondent no. 2 original complainant, or criminal breach of trust as defined u/s. 405 of IPC - there is no element of any criminal offence in the entire matter - both the sides claim right title and interest over the disputed property for which they are already before the civil Court - merely because civil remedy is available and the same has been already availed all by itself would not be a ground to quash the F.I.R. but no case of cheating or forgery made out from the materials on record - FIR quashed - application allowed.**

Imp.Para: [ [22](#) ] [ [23](#) ] [ [24](#) ] [ [25](#) ]

**Cases Referred to :**

1. Central Bureau Of Investigation V/s. Duncans Agro Industries Ltd., 1996 5 SCC 592
2. Common Cause V/s. Union Of India, 1999 6 SCC 667
3. Medchl Chemicals & Pharma (P) Ltd. V/s. Biological E. Ltd. & Ors., 2000 3 SCC 269
4. [Mohammed Ibrahim And Others V/s. State Of Bihar And Another, 2010 1 GLH 184 : 2010 CrLJ 2223 : 2009 \(8\) SCC 751 : 2009 \(12\) Scale 250 : JT 2009 \(11\) 533](#)
5. Om Prakash And Ors. V/s. State Of Jharkhand, 2012 12 SCC 72
6. Onkar Nath Mishra V/s. State (Nct Of Delhi), 2008 2 SCC 561
7. Paramjeet Batra V/s. State Of Uttarakhand & Ors., 2012 12 Scale 688
8. Rajesh Bajaj V/s. State Nct Of Delhi, 1999 3 SCC 259
9. Ram Jas V/s. State Of U.P., 1970 2 SCC 740
10. Rishipal Singh V/s. State Of U.P. & Another, Criminal Appeal No.1300 Of 2014 Arising Out Of Special Leave Petition (Crl) No. 2447 Of 2013 Dated 02 Nd July, 2014.
11. State Of Haryana V/s. Bhajan Lal, 1992 Supp1 SCC 335
12. Zandu Pharmaceuticals Works Ltd. V/s. Mohd. Sharaful Haque & Anr., 2005 1 SCC 122

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**Equivalent Citation(s):**

2014 JX(Guj) 895 : 2014 AIJEL\_HC 231905

**JUDGMENT :-**

**1** A long drawn civil litigation of 26 years is now sought to be given the colour of a criminal offence. This is the long and short of the matter.

**2** By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants-original accused nos. 1 to 3 seek to invoke the inherent powers of this Court, praying for quashing of the First Information Report lodged with the Vastrapur Police Station, Ahmedabad, being C.R. No. I-367 of 2012, of the offence punishable under Sections 420, 465, 467, 471, 120B read with 114 of the Indian Penal Code.

**3** To put it briefly, the case of the respondent no.2-original complainant may be summed up thus:

3.1 The dispute pertains to a parcel of land bearing survey no.131/2 admeasuring 4047 square meters converted to a final plot no.214 of the Town Plan Scheme No.1, Vastrapur village, District Ahmedabad, admeasuring 3094 square meters. According to the respondent no.2, the original first informant, he himself and two other persons had got an agreement to sale executed in their favour, dated 09th August 1988 through the original owners of the land. It is the case of the respondent no.2, that on the very same date i.e. 09th August 1988, they were put to the possession of the same. On 22nd August 1988 the original owners obtained an order from the competent authority under the Urban Land Ceiling Act, and on the same date three different sale deeds were executed in favour of the respondent no.2 and his two colleagues, namely Shri Chirag M. Patel and Shri Laxman P.Darbar. It is alleged in the First Information Report that the accused persons, despite knowing-fully well that the original owners had already transferred the land in question in favour of the respondent no.2 and his two colleagues, yet by practicing fraud, created a forged Power of Attorney purported to have been executed by the original owners in favour of the applicants herein, and on the basis of such forged Power of Attorney, got the land in question once again transferred in their favour. This is the sum and substance of the allegations levelled by the respondent no.2 in the First Information Report.

**4** It appears that on 08th November 2012, a notice was issued to the respondents and an ad-interim relief in terms of para no. 14 (B) was granted, thereby the further investigation of the First Information Report being C.R. No. I-367 of 2012 was stayed.

**5** Mr. K.S. Nanavati, the learned senior advocate appearing on behalf of the applicants herein, submitted that the First Information Report lodged by the respondent no.2 fails to disclose commission of any cognizable offence, and is nothing but an abuse of the process of law. Mr. Nanavati submits that way back in the year 1988, a regular Civil Suit No.610/88 for deceleration & injunction was filed by the respondent no.2, but for the reasons best known, the same was unconditionally withdrawn. Mr. Nanavati further submitted that in the year 2011, an application in the form of a complaint was filed by the respondent no.2 with the police, and in April 2012, the police filed its report stating that the respondent no.2 as a complainant had failed thereafter to pursue the same. The complaint was accordingly ordered

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to be filed. However, thereafter, to the utter surprise of the applicants, all of a sudden, the First Information Report was registered on 01st July 2012.

**6** Mr. Nanavati submitted that a pure civil dispute between the parties is now sought to be given the colour of a criminal offence. Mr. Nanavati, therefore, prays that continuation of investigation by the police of the First Information Report lodged by the respondent no.2 would be nothing short of abuse of the process of law and, therefore, the First Information Report deserves to be quashed.

**7** Mr. Ashish H. Shah, the learned advocate appearing on behalf of the respondent no.2 original complainant, has vehemently opposed this application by submitting that the First Information Report discloses commission of a cognizable offence and the Court, in exercise of its inherent powers, may not quash the same at the threshold. Mr. Shah submits that the necessary ingredients to constitute an offence of cheating and forgery are disclosed on plain reading of the First Information Report. According to Mr. Shah, the Police should be permitted to complete the investigation. Mr. Shah, therefore, prays that there being no merit in this application, the same may be rejected.

**8** The respondent no.2 has filed an affidavit-in- reply opposing this petition, interalia, stating as under:-

6. I further say and submit that the original land owners had executed a Banachitti in respect of the subject land in favour of Shail Narendrabhai Patel (complainant) and two other persons on 01.01.1986. The original land owners executed a registered banakhat as on 09.08.1988 in favour of the complainant and two other persons. A copy of the registered Agreement of Sale dated 09.08.1988 is annexed hereto and marked as Annexure:"R4". I further say and submit that the original land owners had executed a Supplementary Agreement dated 09.08.1988 and handed over the possession of the said land in question to the complainant and two other persons. A copy of the Supplementary Agreement dated 09.08.1988 is annexed hereto and marked as Annexure:"R5". I further say and submit that the competent authority under the ULC Act vide order dated 22.08.1988 granted permission for sale of land in question in favour of the complainant and two other persons. That after the receipt of the permission from U.L.C. Office, Ahmedabad the original land owners executed three registered Sale Deeds dated 22.08.1988 in favour of the complainant and two other persons after getting full and final Sale consideration. The copies of three Sale Deeds dated 22.08.1988 are annexed hereto and marked as Annexure: "R6".

7. I further say and submit that it is pertinent to note that the competent authority, ULC office, Ahmedabad vide order dated 23.08.1988 refused permission for sale of land in favour of the accused persons. A copy of the order dated 23.08.1988 passed by the competent authority , ULC office, Ahmedabad is annexed hereto and marked as Annexure "R7". I further say and submit that the accused persons had challenged the order of the competent authority, ULC office, Ahmedabad before the State Government. The Deputy Secretary, Revenue Department, State of Gujarat vide order dated 10.06.1990 dismissed the Review Application. A copy of the order dated 10.06.1990 passed by the Deputy Secretary, Revenue Department, rejecting the Review Application is annexed hereto and marked as Annexure: "R8". The accused persons being aggrieved by the aforesaid order preferred Revision Application before the Section Officer, Revenue Department, Gandhinagar. The Section Officer,

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Revenue Department, Gandhinagar vide order dated 5/2/1991 dismissed the Revision Application. A copy of the order dated 5/2/1991 passed by the Section Officer, Revenue Department, Gandhinagar rejecting the Revision Application is annexed hereto and marked as Annexure: "R9". The accused persons being aggrieved by the aforesaid order preferred Special Civil Application No. 2864 of 1991 before the Hon'ble Gujarat High Court, Ahmedabad. The Hon'ble Gujarat High Court, Ahmedabad also rejected S.C.A. vide order dated 22.08.1994. A copy of the order dated 22.08.1994 passed by the Hon'ble Gujarat High Court, Ahmedabad in SCA No. 2864 of 1991 is annexed hereto and marked as Annexure:"R10".

8. I say and submit that the complainant and two other persons were in possession of the suit land and were apprehending illegal dispossession at the hands of the accused persons. Therefore the complainant and two other persons had filed Civil Suit No. 610 of 1988 before the Hon'ble Civil Judge, Ahmedabad Rural for permanent injunction. A copy of the plaint of Civil Suit No. 610 of 1988 is annexed hereto and marked as Annexure: "R11". The plaintiff had also filed application for injunction at Exhibit 5 in the aforesaid suit, The Trial Court vide order dated 31.08.1989 allowed the injunction application and directed both the plaintiffs and the defendants to maintain status quo. A copy of the injunction application at Exhibit 5 and the order dated 31.08.1989 passed by the Trial Court below injunction application at Exhibit 5 are annexed hereto and marked as Annexure: "R12" colly. I further say and submit that in the aforesaid suit, the plaintiff had also filed an application for drawing Panchnama. The Court Commissioner had prepared a panchnama dated 25.08.1988 where in it was specifically found that the complainant and two other persons were in possession of the subject land. A copy of the Panchnama prepared in Civil Suit No. 610 of 1988 is annexed hereto and marked as Annexure: "R13".

9. I further say and submit that the petitioners - original accused in spite of the aforesaid facts on the basis of the forge and fabricated Power of Attorney alleged to have been executed in the year 1988, executed two registered sale deeds in respect of the subject land on 29.09.2006. The copies of two sale deeds dated 29.09.2006 are annexed hereto and marked as Annexure: "R14".

10. I further say and submit that the execution of the registered two sale deed dated 29.09.2006 was mutated in the revenue records by mutation entry No.4957 and 4999. The complainant on coming to know of the aforesaid facts had filed objection and therefore the entry was treated as disputed entry and Takerari case No. 80 of 2008 and Takerari case No. 250 of 2008 were registered. The Daskoi Mamlatdar, Ahmedabad vide two separate orders had certified the mutation entries no.4957 & 4999. The complainant had therefore preferred appeal No. 67 of 2009 and 68 of 2009 before the Deputy Collector, Viramgam Prant, Ahmedabad. The Deputy Collector, Ahmedabad vide order dated 20.11.2009 had allowed the appeal file by the complainant and had quashed the mutation entries No. 4957 and 4999. A copy of the order dated 20.11.2009 passed by the Deputy Collector, Ahmedabad in Appeal No. 67 of 2009 and 68 of 2009 is annexed hereto and marked as Annexure: "R15". The petitioners herein preferred Revision Application before the Collector, Ahmedabad being Revision Application No. 19, 21 and 22 of 2010. The Collector, Ahmedabad vide order dated 18.06.2011 dismissed the Revision Applications No. 19, 21 & 22 of 2010. A copy of the combined order of Collector Ahmedabad is annexed hereto and marked as Annexure: "R16". The petitioners herein had preferred Revision Application No.

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95, 96 & 97 of 2010 before the Special Secretary, Revenue Department, Ahmedabad and the same are pending for hearing and adjudication. However, the Special Secretary, Revenue Department, vide order dated 10.05.2012 had rejected the injunction applications. A copy of the order of Revenue Department rejecting the injunction application is annexed hereto and marked as Annexure: "R17".

11. I further say and submit that though the petitioners - original accused were aware about the three sale deeds executed by the original land owners in favour of the complainant and two other persons in the year 1988, The accused persons forged and fabricated the Power of Attorney alleged to have been executed by the land owners in the year 1988 and on the basis of the forged and fabricated Power of Attorney executed three registered sale deeds in the year 2006 and 2009 there by committed offences of cheating and forgery.

**9** Mr. A.N. Shah, the learned APP appearing on behalf of the respondent no.1-State of Gujarat, submitted that the police had carried out the preliminary inquiry pursuant to a written complaint filed by the respondent no.2. However, since thereafter the respondent no.2 failed to pursue the same, the Police Inspector of Vastrapur Police Station, Ahmedabad city did not proceed further and requested through his report dated 16th April 2012 addressed to the Deputy Police Commissioner, Zone-1, Ahmedabad to pass necessary orders in that regard. He submits that thereafter in the month of July, 2012, the First Information Report was ultimately registered at the Vastrapur Police Station.

**10** Having heard the learned advocate appearing for the parties and having gone through the materials on record the only question that falls for my consideration is, whether the First Information Report deserves to be quashed.

**11** The Supreme Court, in the case of Rishipal Singh V/s. State of U.P. & another [Criminal Appeal No. 1300 of 2014 arising out of Special Leave Petition (CRL) No. 2447 of 2013 dated 02 nd July, 2014], has very succinctly discussed the position of law so far as quashing of the criminal proceedings is concerned. The Court observed thus:- "10. Before we deal with the respective contentions advanced on either side, we deem it appropriate to have thorough look at Section 482 Cr.P.C., which reads:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders of this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice."

A bare perusal of Section 482 Cr.P.C. makes it crystal clear that the object of exercise of power under this section is to prevent abuse of process of Court and to secure ends of justice. There are no hard and fast rules that can be laid down for the exercise of the extraordinary jurisdiction, but exercising the same is an exception, but not a rule of law. It is no doubt true that there can be no straight jacket formula nor defined parameters to enable a Court to invoke or exercise its inherent powers. It will always depend upon the facts and circumstances of each case. The Courts have to be very circumspect while exercising jurisdiction under Section 482 Cr.P.C.

**12** This Court in Medchl Chemicals & Pharma (P) Ltd. v Biological E. Ltd and Others 2000 (3) SCC 269, has discussed at length about the scope and ambit while exercising power under

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Section 482 Cr.P.C. and how cautious and careful the approach of the Courts should be. We deem it apt to extract the relevant portion from the judgment, which reads:

"Exercise of jurisdiction under inherent power as envisaged in Section 482 of the Code to have the complaint or the charge sheet quashed is an exception rather than rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution with the lodgement of First Information Report. The ball is set to roll and thenceforth the law takes its own course and the investigation ensures in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on a perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge sheet on the fact of it does not constitute or disclose any offence alleged, there ought not to be any hesitation to rise up to the expectation of the people and deal with the situations as is required under the law. Frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount".

**13** This Court in plethora of judgments has laid down the guidelines with regard to exercise of jurisdiction by the Courts under Section 482 Cr.P.C. In *State of Haryana V/s. Bhajan Lal* 1992 Supp(1) SCC 335, this Court has listed the categories of cases when the power under Section 482 can be exercised by the Court. These principles or the guidelines were reiterated by this Court in (1) *Central Bureau of Investigation V/s. Duncans Agro Industries Ltd.* 1996 (5) SCC 592; (2) *Rajesh Bajaj V/s. State NCT Of Delhi* 1999 (3) SCC 259 and; (3) *Zandu Pharmaceuticals Works Ltd. V/s. Mohd. Sharaful Haque & Anr* (2005) 1 SCC 122. This Court in *Zandu Pharmaceuticals Ltd.*, observed that:

"The power under Section 482 of the Code should be used sparingly and with to prevent abuse of process of Court, but not to stifle legitimate prosecution. There can be no two opinions on this, but if it appears to the trained judicial mind that continuation of a prosecution would lead to abuse of process of Court, the power under Section 482 of the Code must be exercised and proceedings must be quashed". Also see *Om Prakash and Ors. V/s. State of Jharkhand* 3012 (12) SCC 72.

What emerges from the above judgments is that when a prosecution at the initial stage is asked to be quashed, the tests to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case. The Courts have to see whether the continuation of the complaint amounts to abuse of process of law and whether continuation of the criminal proceeding results in miscarriage of justice or when the Court comes to a conclusion that quashing these proceedings would otherwise serve the ends of justice, then the Court can exercise the power under Section 482 Cr.P.C. While exercising the power under the provision, the Courts have to only look at the uncontroverted allegation in the complaint whether prima facie discloses an offence or not, but it should not convert itself to that of a trial Court and dwell into the disputed questions of fact."

**14** Let me first look into the findings recorded by the Police Inspector, Vastrapur Police Station, Ahmedabad city, in his preliminary inquiry report forwarded to the Deputy Police Commissioner, Zone-1, Navrangpura, Ahmedabad city dated 16th April 2012.

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**15** A true English translation of the relevant part of the preliminary inquiry report filed by the Police Inspector reads thus:

"Therefore, on thorough inquiry in the case of the said Application, In respect of the land bearing S.No. 131/2, admeasuring 4047 sq. Mtrs. of Vastrapur sim, it is revealed that for the sale of the said land the original farmers of this case, firstly, executed an Agreement to Sell on a ten rupees stamp paper, in favour of Shree Ami Corporation of the opposite party Narendra Maganbhai Patel, and thereafter, a registered agreement to sell in favour of Diamond Textile Mills Pvt. Ltd., and thereafter the opposite party made an application to the concerned department for construction of a society on the said land. In the meanwhile, it was revealed during the inquiry, that the original farmers of this case, sold the land by executing a registered Deed in favour of the applicant. Further, Arun Hargovindbhai Patel, an associate of Applicant Shri Shail N. Patel, produced a kutchha Agreement to Sale (Bana Chiththi) in the civil suit filed by him in the Civil Court against the opposite party with respect to the said land. In the said Bana Chiththi, Survey No.131/2 of Bodakdev sim is written, and this Bana Chiththi does not bear any Government seal or signature, and the executors of this Bana Chiththi are stated to be farmers (1) Gandaji Bavaji, and (2) Chanduji Bavaji and (3) Bachuji Mangaji, and (4) Kalaji Mangaji and (5) Nanji Mangaji and (6) Rameshji Mangaji all residing at village Bodakdev, Ta. Dascroio, Dist: Ahmedabad. Whereas on perusal of the copy of the extract of 7-12 of Survey No.131/2 of the sim of village Vastrapur with respect to the land of this Application, the same shows the names of (1) Gandaji Bavaji and (2) Chanduji Bavaji out of the said farmers, and the names of other farmers (3) Bachuji Mangaji, and (4) Kalaji Mangaji and (5) Nanji Mangaji are written in the 7-12 extract of Survey No. 299/1+2 of the sim of Bodakdev. It is further revealed that thereafter the original farmers and their heirs, for their personal monetary gain and benefits, executed Agreement to Sale, General Power of Attorney and Deed in favour of other persons for sale of the said land. Thereafter in this case out of the original owners of the said land, Baldevji Chanduji Thakore was personally called and on being asked he has stated in his statement that at the relevant time, firstly, it was decided to sell the said land to Narendrabhai Maganbhai Patel the proprietor of Ami Corporation, and executed registered Agreement to Sale, and thereafter it was sold to Shail N. Patel and others by registered Deed, and thereafter again, I about the year 2006, it was sold to Anil Sanghvi and executed an Agreement to Sale, and it is further stated that since he and other original farmers of this case and their heirs are un-educated and have not undergone higher studies, Arunbhai Patel, the Power of Attorney of Applicant Shail N. Patel, used to meet us from time to time and we were tempted with money from time to time, till the current year, and had got our signatures and thumb impressions and the farmers had given signatures innocently and, therefore, this situation has arisen, and he has stated that first he executed Agreement to Sale in favour of Ami Corporation, and to this effect a statement under his signature is obtained. However, out of all the above documents no document is executed by way of fraud or under bogus signatures. In this case, it is revealed that all the Agreements to Sale, Deeds and Power of Attorneys executed till date by the original farmers of this case and by their heirs, were for economic benefits for receiving money from time to time. Therefore, the original farmers in the said Application of the land bearing S.No.131/2 of the sim of village Vastrapur, although being aware of the fact that they had executed a registered Agreement to Sale in favour of the opposite party Narendra Maganbhai Patel, under the temptation of receiving more money, a registered Deed was executed

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in favour of the Applicant of this case. Thereafter, as an offence is created in respect the said Application, for filing complaint, Arun Hargovandas Patel, the relative of the Applicant, was personally called and informed thrice to file a complaint, and was also informed by phone call, and Shail N. Patel, the Applicant of this case was given registered A.D. notice calling upon him to file complaint within two days failing it would be presumed that he is not interested to do anything in connection with the said Application and the Application will be filed etc and despite the said notice, till date no complaint is filed, and Shivam Arunbhai Patel, who is the relative of the Applicant, was also given written notice and was informed in person to inform his relative to file complaint in respect of the offence with reference to the Application; however, the Applicant has not come forward to file any complaint against the farmers and the opposite party and thus he is not interested to do anything with respect to the Application, the inquiry papers in respect of the Application may be perused and it is requested to pass appropriate order which is for information. Dt. 16.04.2012. Sd/- (D.D.Gohil) Police Inspector Vastrapur Police Station Ahmedabad City."

**16** What is discernable from the report may be summarized as under:-

- (a) The original owners had executed a registered agreement to sale in favour of the accused applicants, and on the strength of such registered agreement to sale, had applied for necessary permission to put up construction of a society on the land in dispute.
- (b) During the interregnum period, when such permission was being awaited, the original owners executed a registered sale deed in favour of the complainant and his colleagues.
- (c) The complainant and his colleagues thereafter filed a Regular Civil Suit No. 610 of 1988 for a declaration and injunction. In the said Civil Suit, the complainant as a plaintiff produced a 'kachcha' agreement to sale which contained no stamps or endorsement of any kind.
- (d) The original owners, with a view to extract more money, kept on transferring the land in favour of different persons despite knowing- fully well that they had already entered into a registered agreement of sale with the accused applicants.
- (e) The Police recorded the statements of the original land owners and they have confirmed about their signatures and thumb impression on the alleged forged Power of Attorney, as asserted by the complainant.
- (f) In none of the documents there is any forgery and no fraud has been played upon the complainant by the applicants herein.
- (g) On the contrary, the original land owners are guilty of committing the offence of cheating with different persons for their personal monetary gain.

**17** From the above, atleast it could be said that even the Police as stated in the preliminary inquiry report dated 16th April 2012 found no case worth the name against the accused

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applicants herein. However, for the reasons unknown the Police after three months registered the F.I.R.

**18** Now, I my look into the Civil Litigations pending between the parties from the year 1988:

Sr.No	Civil Status	Plaintiff	Respondent/Defendan	Prayer
1	610/88 Unconditio nally Withdrawn on the 16.04.2008	(1) Chirag Patel -- (2) Shail Patel (Original Complainant) (3) Laxman Darbar	(1) Dimond Textile Mills Pvt. Ltd.  (2) Amin Corporation (3) Dipakbhai Patel (4) Menaben Thakor (5) Manguben Thakor (6)Sajanben Thakor (7) Lilaben Thakor (8) Chanduji Thakor (9) Baldevji Thakor (10) Banjiben Thakor	Declaration  Suit
2	Cancellation for non prosecutio n in 2008 which was dismissed by Ame. Rural District Court  (2) SCA No.2883/1  1 for restoration in High	445/88 Dismissed Ope. Society No.62/08 (2) Menaben Thakor (3) Manguben restoration Thakor  (4) (5)Lilaben (6) (7) (8)	(1) Balkrishna Co. (1) Case (2) Shail Patel (Original Complainant) (3) Laxman Darbar (4) Arunbhai Patel  Sajanben  Chanduji  Baldevji  Maniben	(1) Chirag Patel  of Sale Deeds of Respondent s  Thakor  Thakor  Thakor  Thakor  Thakor

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Court

Pending

3 209/09 Narendrabhai Patel (1) Chirag Patel  
Declaration PENDING --

(2) Shail Patel (Original that the Complainant) Plaintiff (3) Laxman Darbar therein, is (4) Sandhya Patel the rightful (5) Shivam Patel owner and (6) Arunbhai Patel that the Sale entered into by the Defendants' 4 71/09 (1) Chirag Patel (1) Narendrabhai Patel Contempt of PENDING -- (2) Shail Patel (2) Dimond Textile Mills the court (Original Pvt. Ltd. and breach Complainant) (3) Ami Corporation of injunction (3) Laxman Darbar (4) Hemant Somabhai (4) Sandhya Patel Patel (5) Shivam Patel (5) Manguben Thakor (6) Sajanben Thakor (7) Lilaben Thakor (8) Baldevji Thakor (9) Laxmiben Thakor (10) Subiben Thakor (11) Keshiben Thakor (12) Maniben Thakor 5 931/11 (1) Sandhya Patel (1) Narendrabhai Patel Cancellation PENDING (2) Shivam Patel (2) Ami Corporation of Sale (3) Chirag Patel (3) Dimond Textile Mills Deeds of (4) Shail Patel Pvt. Ltd. 2006 & (Original (4) Hemant Somabhai 2009 in Complainant) Patel favour of (5) Laxman Darbar (5) Nilesh Navnitlal Narendrabh Shah ai Patel (6) Parmanand Maganbhai Patel (7) Manguben Thakor (8) Lilaben Thakor (9) Sajanben Thakor (10) Baldevji Thakor (11) Laxmiben Thakor (12) Subiben Thakor (13) Keshiben Thakor (14) Maniben Thakor

**19** The first question, therefore, that falls for my consideration is, whether any case of the offence of forgery could be said to have been made out.

**20** In my view, no case of forgery worth the name could be said to have been made out by the respondent no.2 original complainant.

**21** The Supreme Court has, in the case of Mohammed Ibrahim and others V/s. State of Bihar and another, reported in 2010(1) GLH 184, very exhaustively explained as to what will constitute forgery. The ratio as propounded by the Supreme Court in the said case squarely applies in the present case. The relevant paragraphs are reproduced hereinbelow :

"10. Section 467 (in so far as it is relevant to this case) provides that whoever forges a document which purports to be a valuable security, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Section 471, relevant to our purpose, provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

11. Section 470 defines a forged document as a false document made by forgery. The term "forgery" used in these two Sections is defined in Section 463. Whoever makes any false documents with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into express or implied contract, or with intent to commit fraud or that the fraud may be committed, commits forgery.

12. Section 464 defining "making a false document" is extracted below :

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"464. Making a false document.-- A person is said to make a false document or false electronic record -- First.-- Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any digital signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or a part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the Authority of a person by whom or by whose Authority he knows that it was not made signed, sealed executed or affixed; or Secondly. -- Who, without lawful Authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly. -- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words 'digital signature' wherever it occurs were substituted by the words 'electronic signature' by Amendment Act 10 of 2009].

13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of Penal Code shows that it divides false documents into three categories :

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the Authority of some other person, by whom or by whose Authority he knows it was not made or executed.

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2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful Authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the Authority of a person, by whom or by whose Authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

**22** I may also make a mention of one important aspect which, for the reasons best known, has been suppressed by the respondent no.2 original complainant. The respondent no.2, in his affidavit, has stated about filing of Regular Civil Suit No. 610 of 1988 in the Court of the Civil Judge, Ahmedabad (Rural), for declaration and injunction. The respondent no.2 has also stated about the order passed by the Civil Court below exhibit-5 i.e. the injunction

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application, wherein both the sides i.e. the plaintiffs and the defendants, were directed to maintain status qua. However, what has been suppressed before the Court is the fact that the said suit was ultimately withdrawn unconditionally by the plaintiffs. I may also state that while deciding the exhibit-5 application, the learned Civil Judge observed that the original owners, having once executed a registered agreement to sell in favour of the accused applicants, could not have thereafter transferred the property in favour of the respondent no.2 and his colleagues. The Court further observed that the first right to get the registered sale deed executed would be in favour of the accused applicants as the defendants.

**23** In my view, no case of cheating is also made out as alleged by the respondent no.2 original complainant, or criminal breach of trust as defined under Section 405 of the Indian Penal Code. Section 405 reads thus:

"405. Criminal breach of trust. -- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits 'criminal breach of trust'."

According to the Section, a 'criminal breach of trust' involves the following ingredients :

"(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

25. Taking into consideration the necessary ingredient to constitute an offence of 'criminal breach of trust', no case at all is made out by the first informant. If the dispute relates to the title of the land in question and if two sides claim to be the owner, then there is no question of any entrustment of the property or dominion over the property. It is not even the case of the first informant that the land in question was entrusted to the accused persons and they had dominion over the land and they have dishonestly misappropriated the same or converted it to their own use.

26. In the case of Onkar Nath Mishra V/s. State (NCT of Delhi), reported in (2008)2 SCC 561, a Bench of two Judges of the Supreme Court observed that two distinct parts were involved in the commission of the offence of criminal breach of trust. The first part consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is the misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created. Therefore, in relation to the offence under Section 405 IPC, the

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first ingredient that needs to be established is "entrustment". In Common Cause V/s. Union of India, reported in (1999) 6 scc 667, the Supreme Court held that:

".....A trust contemplated by Section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under Section 405. The entrustment of property creates a trust which is an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner."

27. Now I may come to Section 420 of IPC. Section 415 of IPC deals with 'cheating and reads as follows:

"415. Cheating.-- Whoever, by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation.--A dishonest concealment of facts is a deception within the meaning of this Section."

28. It is plain from a bare reading of the Section that to hold a person guilty of cheating, as defined in Section 415 of the IPC, it is necessary to show that at the time of making the promise he had fraudulent or dishonest intention to retain the property or to induce the person so deceived to do some thing which he would not otherwise do.

29. The ingredients required to constitute an offence of cheating have been succinctly laid down in Ram Jas V/s. State of U.P., reported in (1970)2 SCC 740 as follows :

"(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

30. Similar views were echoed in Medchl Chemicals & Pharma (P) Ltd. V/s. Biological E.Ltd. & Ors., reported in (2000)3 SCC 269, wherein it was observed that :

"In order to attract the provisions of Sections 418 and 420 the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfill the promise by itself would not attract the provisions of

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Section 418 or Section 420. Mens rea is one of the essential ingredients of the offence of cheating under Section 420. As a matter of fact Illustration (g) to Section 415 makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to civil action for breach of contract....."

31. It is well settled that in order to constitute an offence of cheating, it must be shown that the accused had fraudulent or dishonest intention at the time of making the representation or promise and such a culpable intention right at the time of entering into an agreement cannot be presumed merely from his failure to keep the promise subsequently.

**24** Thus, in the over all view of matter I hold that there is no element of any criminal offence in the entire matter. Both the sides claim right title and interest over the disputed property for which they are already before the civil Court. I am conscious of the fact that merely because civil remedy is available and the same has been already availed all by itself would not be a ground to quash the F.I.R. but as discussed above I do not find any case of cheating or forgery made out from the materials on record.

**25** I may quote with profit a decision of the Supreme Court in the case of Paramjeet Batra V/s. State of Uttarakhand & Ors. reported in 2012 (12) Scale page 688, wherein, the Supreme Court has observed as under:

"While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."

**26** In the result this application is allowed. The First Information Report being C.R. No. I-367/2012 lodged with the Vastrapur Police Station, Ahmedabad is hereby ordered to be quashed.

**27** I clarify that this order will however have no effect on the pending four civil suits between the parties. Needless to say that the Court, seized of the said suits, shall decide the same independently and in accordance with law.

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