

**IN THE HIGH COURT OF MADHYA PRADESH AT
INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

MISC. CRIMINAL CASE No. 1433 of 2016

BETWEEN:-

DINESH SHARMA S/O LATE MR. KAILASHCHANDRA SHARMA, AGED ABOUT 49 YEARS, OCCUPATION: GOVT. SERVICE, THANA IN-CHARGE, SADALPUR, DIST. DHAR 304, HIDE PARK, 11, MIRAPATH DHENU MARKET, INDORE (MADHYA PRADESH)

.....APPLICANT

(BY SHRI SATYENDRA KUMAR VYAS, SENIOR ADVOCATE ASSISTED BY SHRI AMIT VYAS APPEARING ON BEHALF OF HARSHVARDHAN PATHAK, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THRU. P.S. STATION ROAD RATLAM, RATLAM (MADHYA PRADESH)

2. RAKESH VYAS THR.LRS SMT. ANITA VYAS, AGED ABOUT 55 YEARS, OCCUPATION: HOUSEMAKER 303 MANGLAM APPT., PRATAP NAGAR RATLAM (MADHYA PRADESH)

3. RAKESH VYAS THR.LRS SH TANUJ VYAS, AGED ABOUT 30 YEARS, OCCUPATION: PRIVATE JOB 303 MANGLAM APPT., PRATAP NAGAR RATLAM (MADHYA PRADESH)

4. RAKESH VYAS THR.LRS SH ANKIT VYAS, AGED ABOUT 28 YEARS, OCCUPATION: PRIVATE BUSINESS 303 MANGLAM APPT., PRATAP NAGAR RATLAM (MADHYA PRADESH)

.....RESPONDENTS

***(STATE BY SHRI SUDHANSHU VYAS, PANEL LAWYER)
(RESPONDENT NO.2 BY SHRI RITVIK MISHRA, ADVOCATE)***

CRIMINAL REVISION No. 1643 of 2015

BETWEEN:-

- SMT. ANITA VYAS, AGED ABOUT 55 YEARS, OCCUPATION:
1. **HOMEMAKER 303 MANGALAM APARTMENT PRATAP NAGAR RATLAM (MADHYA PRADESH)**
 2. **SH TANUJ VYAS, AGED ABOUT 30 YEARS, OCCUPATION: PRIVATE JOB 303- MANGALAM APPT., PRATAP NAGAR, (MADHYA PRADESH)**
 3. **ANKIT VYAS, AGED ABOUT 28 YEARS, OCCUPATION: PERSONAL BUSINESS 303- MANGALAM APPT., PRATAP NAGAR, (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI RITVIK MISHRA, ADVOCATE)

AND

- SUBODH S/O VIJAYSHANKAR MISHRA, AGED ABOUT 53 YEARS,
1. **OCCUPATION: BUSINESS 8, SHIVAM APARTMENT MITRA NIWAS COLONY, RATLAM (MADHYA PRADESH)**
 2. **SUNITA W/O SUBODH MISHRA, AGED ABOUT 47 YEARS, OCCUPATION: HOUSE WIFE 8, SHIVAM APARTMENT MITRA NIWAS COLONY, RATLAM DISTT RATLAM (MADHYA PRADESH)**
 3. **SEEMA W/O PRASHANT NIWAS, AGED ABOUT 40 YEARS, MITRA NIWAS COLONY, DISTT RATLAM (MADHYA PRADESH)**
 4. **SEEMA W/O UMESH SHARMA, AGED ABOUT 38 YEARS, OCCUPATION: HOUSE WIFE 2831, YADAV MOHALLA, PURANA INDORE ROAD MHOW DISTRICT INDORE (MADHYA PRADESH)**
 5. **DINESH SHARMA S/O KAILASH SHARMA, AGED ABOUT 50 YEARS, CHO IN CHARGE SALAKHEDI, DISTRICT DHAR AT PRESENT POLICE HEADQUARTER BHOPAL (MADHYA PRADESH)**
 6. **ANURAG S/O ASHOK SHUKLA, AGED ABOUT 38 YEARS, OCCUPATION: BUSINESS AADARSH NAGR NAGJHIRI DEWAS ROAD DISTRICT UJJAIN (MADHYA PRADESH)**
 7. **VISHNUDATT DUBEY S/O RAMGOPAL, AGED ABOUT 60 YEARS, IN FRONT OF SALAKHEDI POLICE CHOWKI RATLAM (MADHYA PRADESH)**

.....RESPONDENTS

(RESPONDENT NO.6 BY SHRI RAGHAV SHRIVASTAVA, ADVOCATE)

CRIMINAL REVISION No. 162 of 2016

BETWEEN:-

SMT. SEEMA W/O PRASHANT SHARMA, AGED ABOUT 43 YEARS,
1. OCCUPATION: M MITRA NIWAS COLONY, RATLAM (MADHYA PRADESH)

SMT SEEMA W/O UMESH SHARMA, AGED ABOUT 43 YEARS, 2831,
2. YADAV MOHALLA OLD INDORE RAOD MHOW IDISTRICT IDNRE (MADHYA PRADESH)

.....APPLICANT

(BY SHRI ROHIT SHARMA, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THRU.
P.S. STATION ROAD, RATLAM (MADHYA PRADESH)

SMT. ANITA VYAS LRS SHRI RAKESH VYAS, AGED ABOUT 55 YEARS,
2. OCCUPATION: HOUSEMAKER 303, MANGLAM APARTMENT PRATAP NAGAR RATLAM (MADHYA PRADESH)

3. SHRI TANUJ VYAS, AGED ABOUT 30 YEARS, OCCUPATION: PRIVATE JOB 303 MANGALAM APPT. PRATAP NAGAR, (MADHYA PRADESH)

ANKIT VYAS, AGED ABOUT 28 YEARS, OCCUPATION: PERSONAL
4. BUSINESS 303 MANGALAM APPARTMENT, PRATAP NAGAR (MADHYA PRADESH)

.....RESPONDENTS

(STATE BY SHRI SUDHANSHU VYAS, PANEL LAWYER)

(RESPONDENT NO.2 BY SHRI RITVIK MISHRA, ADVOCATE)

MISC. CRIMINAL CASE No. 4396 of 2016

BETWEEN:-

ANURAG SHUKLA S/O ASHOK SHUKLA, AGED ABOUT 45 YEARS,
OCCUPATION: BUSINESS AADARSH NAGAR, NAGJHIRI, DEWAS ROAD, UJJAIN (MADHYA PRADESH)

.....APPLICANT

(BY SHRI RAGHAV SHRIVASTAVA, ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THRU.
P.S. STATION ROAD, RATLAM (MADHYA PRADESH)**

**RAKESH VYAS THR. LRS ANITA VYAS, AGED ABOUT 55 YEARS,
2. OCCUPATION: HOUSEMAKER 303 MANGLAM APPT., PRATAP NAGAR
RATLAM (MADHYA PRADESH)**

**RAKESH VYAS THR. LRS SH TANUJ VYAS, AGED ABOUT 30 YEARS,
3. OCCUPATION: PRIVATE JOB 303, MANGALAM APPT, PRATAP NAGAR,
RATLAM (MADHYA PRADESH)**

**RAKESH VYAS THR. LRS SH ANKIT VYAS, AGED ABOUT 28 YEARS,
4. OCCUPATION: PRIVATE JOB 303 MANGLAM APPT., PRATAP NAGAR
RATLAM (MADHYA PRADESH)**

.....RESPONDENTS

(STATE BY SHRI SUDHANSHU VYAS, PANEL LAWYER)

(RESPONDENT NO.2 BY SHRI RITVIK MISHRA, ADVOCATE)

Reserved on : 07th November, 2023

Delivered on : 20th November, 2023

These applications / revisions having been heard and reserved for order coming on for pronouncement this day, the court pronounced the following:

O R D E R

Considering the similarity of the offences, facts & grounds involved and the joint request of the parties, all cases are being heard and decided together through a common order.

M.Cr.C. No.1433 of 2016

02. The applicant Dinesh Sharma has filed this M.Cr.C. under Section 482 of the Code of Criminal Procedure, 1973 seeking quashment of the order dated 20.11.2015 passed in Sessions Trial No.144/2015.

Cr.R. No.1643 of 2015

03. The applicants Mrs Anita Vyas and others (legal heirs of the complainant Rakesh Vyas) have filed this revision under Section 397 r/w section 401 of the Cr.P.C. being aggrieved by the order dated 20.11.2015, whereby the respondents/ accused have been discharged from the offence punishable under Sections 294, 506, 118, 167, 196, 201, 212, 218, 384, 465, 467, 468 & 471 of the Indian Penal Code.

Cr.R. No.162 of 2016

04. The applicants Mrs. Seema and another have filed this revision under Section 397 r/w 401 of the Cr.P.C. seeking quashment of order dated 20.11.2015, whereby the learned Special Judge, Ratlam directed the Chief Judicial Magistrate to frame charges against the present applicants under Sections 420 & 120-B of the IPC.

M.Cr.C. No.4396 of 2016

05. The applicant Anurag Shukla has filed the present M.Cr.C. under Section 482 of the Cr.P.C. seeking quashment of the First Information Report dated 08.10.2012 and all consequential proceedings arising out of the said F.I.R.

Facts of the case

06. The undisputed facts are that Subodh Mishra was the owner of agricultural land bearing Survey No.15/1 area of 0.210 hectare. Vide registered sale deed dated 25.06.1998, Subodh Mishra sold 0.90 hectares land out of 0.210 hectares land to Anurag Shukla. Subodh Mishra and Rakesh Vyas entered into a partnership deed to start the business. On 01.03.2009, a sale agreement said to have been executed between Anurag Shukla and Rakesh Vyas (now dead), for transfer of the

ownership right of non-agricultural land bearing Survey No.15/1 area 0.090 hectare situated at Village – Salakhedi, Tehsil & District – Ratlam to Rakesh Vyas in total consideration of Rs.10,00,000/-. Thereafter, renewal of the agreement dated 31.08.2009 was signed by Subodh Mishra in the capacity of Anurag Shukla. As per the renewal agreement, Hotel Vrindavan was constructed and thereafter, land along with the building was transferred to Sai Sutli Plastic Industries for Rs.56,00,000/-.

07. A complaint dated 04.01.2010 was filed by Rakesh Vyas against Subodh Mishra that he fraudulently got executed an agreement by projecting himself as General Power of Attorney holder of Anurag Shukla and on the basis of such agreement, he had invested huge money for the construction of Hotel Vrindawan. Now neither Anurag Shukla nor Subodh Mishra is executing a registered sale deed, hence, he has been cheated by Subodh Mishra. The police recorded the statement and found that it was a civil dispute, therefore, did not take any action and advised the parties to approach the Civil Court.

08. On 11.02.2010, Rakesh Vyas filed a complaint under Section 420 of the IPC before Chief Judicial Magistrate, Ratlam in which under Section 156 of Cr.P.C. a direction was given to the police to conduct an enquiry. An investigation was carried out by the co-accused – Dinesh Sharma, the then Station House Officer, Police Station – Salakhedi after the direction issued under Section 156 of the Cr.P.C. and a report has been submitted stating that it is purely a civil dispute between the parties. According to the complainant the then Deputy Director, of Prosecution gave an opinion that *prima facie* Subodh Mishra committed

the forgery. The allegation against Dinesh Mishra is that in his report he did consider the opinion given by the Deputy Director and concealed the same.

09. Thereafter, Anurag Shukla sold the land Survey No. 15/1 to Mrs. Seema Sharma who is wife of the brother of Dinesh Sharma, Smt. Seema Sharma W/o Umesh Sharma, and Smt. Sunita, therefore, offence under Sections 119 & 120 of the IPC has also been committed by Dinesh Sharma. The complainant examined himself, Ankit Vyas and two other witnesses in support of the complaint. The allegations of Sections 294 & 506-B were also levelled against the accused persons.

10. The final report was submitted against (i) Subodh Mishra; (ii) Sunit Mishra; (iii) Seema Sharma W/o Prashant Sharma; (iv) Seema W/o Umesh Sharma; (v) Dinesh Sharma; (vi) Anurag Shukla and (vii) Vishnudatt Dubey under Sections 118, 119, 120, 167, 196, 201, 212, 218, 384, 506, 294, 420, 465, 467, 468, 469, 471, 120-B & 34 of the IPC and vide order dated 18.02.2014 the complaint case has been committed to the Sessions Court.

11. The order dated 06.10.2012, whereby the CJM directed the police to hold an enquiry under section 156(3) of the Cr.P.C. was challenged by some of the accused persons by way of M.Cr.C. under Section 482 of the Cr.P.C. before this Court. Vide order dated 27.02.2015, all the M.Cr.Cs. were dismissed by holding that the Magistrate rightly exercised the power under Section 156(3) of the Cr.P.C. Thereafter, SLP was preferred and that too had been dismissed vide order dated 08.03.2016 with an observation that observation made by the High Court as recorded in the impugned order will not influence

the trial.

12. After remand, the Sessions Judge heard the parties on charges and Dinesh Sharma under the provision of Section 197 of the Cr.P.C. Vide order dated 20.11.2015 after considering all the material available on record, the learned Sessions Judge found that there are sufficient material to frame the charges only under Section 420 of the IPC against Subodh Mishra and Section 420 r/w 120-B against other accused persons and Sections 119 & 120 against Dinesh Sharma and all have been discharges under Sections 294, 506, 118, 167, 196, 201, 212, 218, 384, 465, 467, 468, 469 & 471 of the IPC.

13. Being aggrieved by the aforesaid order, Dinesh Sharma, SHO filed M.Cr.C. No.1433 of 2016, Smt. Seema Sharma W/o Prashant Sharma & Smt. Seema Sharma W/o Umesh Sharma filed Cr.R. No.162 of 2015, Anurag Shukla filed M.Cr.C. No.4396 of 2016 and Rakesh Vyas filed Cr.R. No.1643 of 2015.

14. Vide order dated 06.04.2017, Co-ordinate Bench of this Court allowed Criminal Revision No.162 of 2015 and set aside the order dated 20.11.2015 with a direction to proceed against all the accused for the offence punishable under Sections 294, 506, 118, 167, 196, 201, 212, 218, 384, 465, 467, 468, 469 & 471 of the IPC. Being aggrieved by the aforesaid order, Anurag Shukla preferred Special Leave Petition (Crl.) No.5385/2017 on the ground that two M.Cr.Cs and one revision are also pending before the High Court challenging the same impugned order dated 20.11.2015, therefore, the High Court has wrongly heard Cr.R. No.1643 of 2015. The Apex Court vide order dated 22.09.2021 has set aside the order dated 06.04.2017 and remanded the matter back to the

High Court to decide all the M.Cr.Cs. / Revision jointly. Parties were given the liberty to raise their submissions and objections in the pending petitions. The Apex Court directed to decide all the pending cases expeditiously but in no case later than four months. Thereafter, these petitions were listed from time to time but adjourned due to paucity of time. Again the Apex Court vide order dated 16.10.2023 directed to decide these petitions expeditiously, thereafter, for the first time, these petitions have been listed before this Court, hence, heard finally.

15. During the pendency of these petitions / trials, complainant – Rakesh Vyas expired and his legal heirs have been brought on record in the complaint case as well as criminal revisions / M.Cr.Cs.

16. Shri S.K. Vyas, learned Senior Counsel appearing on behalf of Dinesh Sharma raised an objection that the criminal revision filed on behalf of Rakesh Vyas stands abated due to the death of the complainant, hence, cannot be prosecuted by his legal heirs as in Cr.P.C. there is no such provisions for prosecution of complaint / Criminal Revision by legal heirs. So far as the effect of the death of the complainant Rakesh Vyas in the complaint case is concerned, it is for the trial Court to consider its effect in the pending trial. It is further submitted by learned Senior Counsel that in the trial only the examination-in-chief of Rakesh Vyas has been done that too without exhibiting any document and due to his death cross-examination cannot be done now, therefore, the proceedings of the complaint case also got abated. So far as the validity of the order passed by the Sessions Court is concerned, Shri Vyas, learned Senior Counsel submitted that these applicants have rightly been discharged from the offences punishable

under Sections 294, 506, 118, 167, 196, 201, 212, 218, 384, 465, 467, 468, 469 & 471 of the IPC. So far as Section 420 of the IPC is concerned, the same is also not made out as it was purely a civil dispute or at the most a commercial dispute between the parties which has been given the colour of a criminal case. Till date, no suit for recovery of money or specific performance of the contract has been filed by the complainant, therefore, the proceedings of the complaint case are liable to be quashed.

17. Shri Rohit Sharma learned counsel appearing in Criminal Revision No.162 of 2016 submitted that applicants are only *bonafide* purchasers of the land from Anurag Shukla and they had no knowledge about the deal between complainant and Subodh Mishra, hence, they have unnecessarily been dragged in this criminal case .

18. Shri Raghav Shrivastava learned counsel appearing for Anurag Shukla submitted that he had no knowledge about the Power of Attorney in the name of Subodh Mishra, as he never executed the same which is not available in the challan also. Anurag Shukla is not bound by the forgery / cheating committed by Sourabh Mishra. He never signed the sale agreement and renewal agreement with the complainant, he is liable to be discharged .

19. Learned counsel appearing for the legal heirs of Rakesh Vyas refuted that the cheating was done with late Rakesh Vyas by Subodh Mishra by entering into sale agreement without Power of Attorney of Anurag Shukla. Dinesh Sharma conducted a faulty investigation and concealed various facts in order to give benefit to his relatives who purchased the same disputed land from Anurag Shukla. However, it is

correct that now cross-examination of late Rakesh Vyas cannot be done, but police have filed the charge-sheet in this case, therefore, the prosecution can establish the charges from the evidence available in the final report. It is further submitted by learned counsel that this Court vide order dated 06.04.2017 had considered all the arguments raised by the accused and rightly found that there is enough material to prosecute them under Sections 294, 506, 118, 167, 196, 201, 212, 218, 384, 465, 467, 468, 469 & 471 of the IPC, therefore no interference is called for and Cr.R. No.1643 of 2015 be allowed on the same terms and other petitions are liable to be dismissed.

Appreciations & Conclusion

20. Rajesh Singh Chouhan, Inspector, Station Road, Ratlam submitted a charge-sheet dated 18.06.2014 before the Judicial Magistrate First Class, according to which a partnership deed between Subodh Mishra & late Rakesh Vyas was executed and registered on 21.02.2007 before Sub Registrar for opening of Vrindivan Hotel & Bar. In the said Partnership Firm, Subodh Mishra projected himself as the owner of land bearing Survey No.15/1 area 0.210 hectare. The said hotel was constructed in the year 2008 and FL3 bar license was obtained by late Rakesh Vyas. In February, 2009, a recovery notice was received from the Bank of Maharashtra, then late Rakesh Vyas came to know that Subodh Mishra had already sold this land area 0.90 of Survey No.15/1 to Anurag Shukla on 25.06.1998 and the said land is mortgaged with Bank of Maharashtra. At present, there is plastic industry established in the name of Sai Sutli Plastic Industries. The investigation further revealed that Subodh Mishra projected himself as Power of Attorney

holder of Anurag Shukla and further entered into an agreement to sale with Rakesh Vyas in respect of sale of land admeasuring 0.90 hectare for consideration of Rs.10,00,000/- and 0.120 hectare land for Rs.56,00,000/- by executing two sale agreement on 01.03.2009. Subodh Mishra received Rs.17,00,000/- from Rakesh Vyas, but did not execute the sale deed, therefore, the complaint was made to the Superintendent of Police, Ratlam. When no action was taken, then a private complaint was filed on 10.02.2010.

21. Even if the prosecution is believed as it is, the allegation of cheating is only against Subodh Mishra, who entered into a partnership agreement with the complainant – Rakesh Vyas projecting himself to be the owner of land bearing Survey No.15/1 area 0.210 hectares, but Subodh Mishra had already sold the said land 0.90 hectares on 25.06.1998 to Anurag Shukla, therefore, Anurag Shukla has wrongly been made accused in this case, who is a *bonafide* purchaser of land sold to him in the year 1998 by Subodh Mishra, he is liable to be discharged from all the charges.

22. According to the complainant Rakesh Vyas, he came to know in the month of February, 2008 that this land was mortgaged with the Bank of Maharashtra and 0.90 hectares of the said land had already been sold to Anurag Shukla, therefore, he ought not to have entered into an agreement to sale on 01.03.2009. Even if the said agreement to sale was executed, that was executed by Subodh Mishra projecting himself to be the Power of Attorney holder of Anurag Shukla and that Power of Attorney is not available on record, therefore, the entire cheating, at the most, said to have been committed by Subodh Mishra and not by

Anurag Shukla.

23. The final report further revealed the role of other accused i.e. Dinesh Sharma, who was the Station House Officer at that relevant point of time, submitted a report that as per the allegation, it is purely a civil dispute and allegedly concealed the report of Deputy Director i.e. only in respect of forgery / cheating committed by Subodh Mishra. The report submitted by the Investigating Officer is never binding on the Court and the Court is always competent to reject the report. The report is like an opinion by a police officer and it is for the Court whether it is worthy of acceptance or rejection, therefore, it cannot be gathered that Station House Officer was in connivance with Subodh Mishra and prepared the said report in his favour.

24. So far as the role of Smt. Seema Sharma W/o Prashant Sharma and Seema Sharma W/o Umesh Sharma is concerned they purchased the land from Anurag Shukla after so called agreement to sale with Rakesh Vyas. The agreement to sale was executed between Rakesh Vyas & Subodh Mishra on the basis of the forged Power of Attorney of Anurag Shukla. Therefore, Anurag Shukla had no knowledge about the alleged transaction between Rakesh Vyas and Subodh Mishra, hence, he was free to sell the land to Seema Sharma W/o Prashant Sharma and Seema Sharma W/o Umesh Sharma and they are the *bonafide* purchaser. The agreement between Subodh Mishra and Rakesh Vyas dated 01.03.2009 is a part of charge-sheet, in which Subodh Mishra alone signed as proprietor of M/s Sarvodaya Automobiles and owner of M/s Highway Dhaba as a seller for sale of Survey No.15/1 area 0.120 hectare and sign of Anurag Shukla is not there in the said agreement. Another agreement

was signed by Subodh Mishra as Power of Attorney holder of Anurag Shukla for sale of 0.90 hectares of land of the same survey number on 01.03.2009, in which also neither signature of Anurag Shukla is there nor Power of Attorney is attached. The extension agreement was also signed between Rakesh Vyas and Subodh Mishra, in which there is no role of other accused persons. Therefore, *prima faice* there is material only against Subodh Mishra and the initial complaint was also filed against Subodh Mishra under Section 420 of the IPC, but later on all these accused persons were added. Anurag Shukla had already purchased the land vide registered sale deed dated 25.06.1998 and the same is not a forged document. Thereafter, he executed the sale deed in the year 2010.

25. The investigation also revealed that Jeevanlal Sharma sold the land bearing Survey No.15/1 area 0.210 hectare vide registered sale deed dated 20.09.1983 to Subodh Mishra, thereafter, Subodh Mishra sold the said land area 0.90 hectare vide registered sale deed dated 25.06.1998 to Anurag Shukla, thereafter, Anurag Shukla soled the same land renumbered as Survey No.15/12 to Seema Sharma W/o Prashant Sharma and Seema Sharma W/o Umesh Sharma on 19.10.2010. These are the registered sale deed and in view of the judgment delivered by the Apex Court in the case of *Mohammed Ibrahim & Others v/s The State of Bihar & Another reported in (2009) 8 SCC 751*, these agreements cannot be treated as false and fabricated documents. Paragraphs 14 to 17 of the aforesaid judgment are reproduced below:-

14. An analysis of [section 464](#) of Penal Code shows that it divides false documents into three categories:

14.1) 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.

14.2) 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.

14.3) 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 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 a 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. [Section 420](#) IPC .

26. In view of the aforesaid judgment, the purchasers of the land have wrongly been arraigned as accused in these cases, hence, they are also liable to be discharged from all charges.

27. There is only a registered agreement between Subodh Mishra & Rakesh Vyas and the rests of the documents are unregistered documents notarized on Rs.100/- stamp paper for which the complainant Rakesh Vyas ought to have filed a suit for specific performance of contract. For getting the sale deed registered stamp duty @ 7 to 10% is liable to be paid and for filing a suit for specific performance of the contract, the *ad valorem* court fee is liable to be paid on the market value of the property mentioned in the sale deed. In order to avoid payment of stamp duty as well as court fees, a trend has been developed to get an F.I.R. registered u/S 420, 467 and 468 etc of I.P.C. and thereafter, to pressurize the seller either to return the amount or execute the sale deed. After rejection of the bail or after some time most of the cases end into compromise, this is

nothing but missuses of the police and valuable time of the courts to settle personal dispute or vendetta.

28. In the case of *Indian Oil Corporation v/s NEPC India Limited* reported in (2006) 6 SCC 736 Hon'ble the Supreme Court of India has held as under:-

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suriv. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

“It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

29. Recently also in the case of *Syed Yaseer Ibrahim v. State of U.P.* reported in 2022 SCC OnLine SC 271 has held as under:-

8. Both the FIR and the charge-sheet, which has been submitted after investigation, would leave no manner of doubt that there are rival contentions of the appellant, on the one hand, and the second respondent, who is the complainant, on the other, which form the subject of a pending suit. The contesting parties lay a claim to the immovable property, which is in dispute. The appellant founded his claim on the strength of an alleged deed of gift. On the other hand, the second respondent has claimed on the basis of a Will alleged to have been executed in his favour. The second respondent has instituted a suit for declaration and possession which is pending. The suit was dismissed in default on 13 October 2014. The sale deed was executed by the appellant on 24 November 2014. The suit has been

restored to file on 21 April 2016. Each of the rival claims would be tested in the course of the evidence adduced at the trial of the suit. Mr. Sanjay Singh submitted that since the sale took place during the pendency of the suit, doctrine of lis pendens will apply. This itself is an indicator of the position that it is essentially a dispute of a civil nature. The execution of a sale deed, during the pendency of the suit, may attract the doctrine of lis pendens, but, from reading the charge-sheet as it stands, it is evident that there is no element of criminality which can stand attracted in a matter which essentially involves a civil dispute between the appellant and the second respondent.

9. Insofar as the appellant is concerned, none of the ingredients of the offence punishable under Section 420 of the IPC have been found to exist after the investigation was complete. Neither the FIR nor the charge-sheet contain any reference to the essential requirements underlying Section 420. In this backdrop, the continuation of the prosecution against the appellant would amount to an abuse of the process where a civil dispute is sought to be given the colour of a criminal wrong doing.

30. Here it is a case where the partnership deed was executed and business was started, thereafter, Subodh Mishra entered into an agreement to sale with Rakesh Vyas and did not own the same. So far as the land measuring 0.90 hectares is concerned, it had already been sold to Anurag Shukla, therefore, the remaining area of 0.120 was with Rakesh Vyas for which he was free to execute the sale deed. However, instead of filing suit for specific performance of the contract against him, an F.I.R. was lodged and as discussed above, the other accused persons have wrongly been arraigned only on the basis of oral allegations that they were associated with Subodh Mishra.

31. So far as order dated 06.04.2017 is concerned, this Court set aside the order of Sessions Court dated 20.11.2015 on the ground that trial means the determination of the issue as adjudging the guilt and innocence of a person and this Court vide order dated 27.02.2015 had already dismissed the M.Cr.Cs. which had been upheld by the Apex Court.

32. Earlier, some of the accused approached this Court by way of a petition under Section 482 of the Cr.P.C. challenging the order passed under Section 156 of the Cr.P.C. directing the police to conduct an enquiry. The said M.Cr.Cs. were dismissed by this Court on the ground that the Magistrate has power under Section 156 of the Cr.P.C. and at that time, no F.I.R. was registered and no investigation was carried out and SLP against the said order was dismissed by the Apex Court. After completion of the investigation, charge-sheet was filed and the Sessions Court rightly came to the conclusion that offence under Sections 294, 506, 118, 167, 196, 201, 212, 218, 384, 465, 467, 468, 469 & 471 of the IPC is not made out as there is absolutely no material available in the case-diary to prosecute the accused. Therefore, the earlier order passed by this Court in M.Cr.C. Nos.3170 of 2014 & 9416 of 2014 dated 27.02.2015 was not passed after examining the material available in the charge-sheet because at that time charge-sheet was not filed and second time order dated 06.04.2017 was passed only on the ground that earlier order had been upheld by the Apex Court.

33. In view of the above, M.Cr.C. No.1433 of 2016 stands allowed. The impugned order dated 20.11.2015 passed in Sessions Trial No.144/2015 and the proceedings pending before the Chief Judicial Magistrate against Dinesh Sharma are hereby quashed.

34. Cr.R. No.162 of 2016 also stands allowed. The order dated 20.11.2015 is hereby quashed and the applicant Smt. Seema Sharma w/o Shri Prashant Sharma and Smt. Seema Sharma w/o Shri Umesh Sharma is discharged from the offence punishable under Sections 420 & 120-B of the IPC.

35. M.Cr.C. No.4396 of 2016 also stands allowed. First Information Report dated 08.10.2012 and all consequential proceedings arising out of the said F.I.R. against Anurag Shukla are hereby quashed.

36. Cr.R. No.1643 of 2015 filed by Smt. Anita Vyas and others (legal heirs of the complainant) stands dismissed.

Let a copy of this order be kept in the connected cases also.

(VIVEK RUSIA)
J U D G E

Ravi