

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

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 17th OF MARCH, 2023

MISC. CRIMINAL CASE No. 38064 of 2020

BETWEEN:-

1. SUNIL S/O SHANTILAL JAIN, AGED ABOUT 48 YEARS, OCCUPATION: BUSINESS HATIRAM DARWAJA, (MADHYA PRADESH)

2. MANILAL S/O SHANTILAL JI GANDHI, AGED ABOUT 55 YEARS, OCCUPATION: BUSINESS HATIRAM DARWAZA (MADHYA PRADESH)

3. ANIL S/O SHANTILAL GANDHI, AGED ABOUT 45 YEARS, OCCUPATION: BUSINESS HATIRAM DARWAJA (MADHYA PRADESH)

.....APPLICANTS

(SHRI VEER KUMAR JAIN, LEARNED SENIOR ADVOCATE WITH SHRI MAYANK PATEL, LEARNED COUNSEL FOR THE APPLICANTS)

AND

**STATE OF M.P. STATION HOUSE OFFICER
THROUGH P.S. STATION ROAD, RATLAM
(MADHYA PRADESH)**

.....RESPONDENT

(SHRI GOVIND RAI PUROHIT, LEARNED GOVT. ADVOCATE FOR RESPONDENT/STATE) (SHRI ABHINAV MALHOTRA, LEARNED COUNSEL FOR THE RESPONDENT [OBJ])

MISC. CRIMINAL CASE No. 10146 of 2020

BETWEEN:-

1. SMT. SAKINA D/O LATE SHABBIR HUSSAIN,
AGED ABOUT 24 YEARS, 42, LAKKADPITHA
(MADHYA PRADESH)

2. SMT. RABABBAI W/O LATE SHABBIR
HUSSAIN, AGED ABOUT 59 YEARS, 42
LAKKADPITHA DIST. RATLAM (MADHYA
PRADESH)

.....APPLICANT

(SHRI MANISH YADAV, LEARNED COUNSEL FOR THE APPLICANTS)

AND

1. THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THR.PS.
STATION ROAD RATLAM (MADHYA
PRADESH)

2. IRFAN S/O RASEES MO. ANSARI, AGED
ABOUT 34 YEARS, OCCUPATION: BUSINESS
49 MOMINPURA RATLAM PRESENT ADD.
SAMTA NAGAR DIST. RATLAM (MADHYA
PRADESH)

.....RESPONDENTS

*(SHRI GOVIND RAI PUROHIT, LEARNED GOVT. ADVOCATE FOR
RESPONDENTS/STATE) (SHRI ABHINAV MALHOTRA, LEARNED
COUNSEL FOR THE RESPONDENT [OBJ])*

*These petitions coming on for admission this day, the court passed the
following:*

ORDER

Both the petitions under Section 482 of the Code of Criminal Procedure seeking quashment of the common order dated 19.09.2019 and, therefore, they are being decided by this common order.

2) These are the petitions under Section 482 of the Code of Criminal Procedure, 1973 for quashment of the FIR registered at Crime No.591/2019 at Police Station: Station Road, Ratlam for an offence under Sections 420, 467, 468, 471 of IPC.

3) The facts of the case adumbrated in a nutshell are that as per the prosecution story a written complaint was filed on 10.09.2019 by the complainant Mohammed Irfan Khan against Sakina, Rabab Bai and Santosh Kumar alleging an offence said to be committed on 04.01.2019 under Sections 420, 420-B of the IPC. It is alleged that the land bearing Survey No. 24/1 belongs to the complainant Irfan, while land bearing Survey No. 24/6 belongs to Rabab Bai. Rabab Bai sold her land through power of attorney – Sakina to Santosh by a registered sale deed. It is further alleged that while executing the sale deed, Rabab Bai and Sakina annexed a old traced map of the land, which does not show the *batankan* or partition of the land. The complainant alleged that this was done intentionally to grab his land bearing Survey No. 24/1, which is more valuable than the land of the Rabab Bai by replacing the same by Survey No. 24/6, which has less value. During the course of investigation and after the death of accused Santosh the statement of Saking and Rabab Bai was

recorded under Section 27 of the Evidence Act. They both revealed that all this was done by the present applicants. Thereafter complainant was making allegation against the applicants also and Sections 467, 468, 471 of IPC were added. It is further alleged by the complainant that when he was running a Dhaba (motel) on his land bearing Survey No. 24/1, the accused persons tried to dispossess him forcibly. Alleging that seller Rabab Bai and purchaser Santosh conspired against him to grab his land, the complainant approached the police and filed a written complaint. During the course of investigation, on the statement of Sakina and Rabab Bai, it has come out that the conspiracy was done by the applicants and the forgery and forged documents were prepared and annexed along with the alleged sale deed.

4) Learned counsel for the applicants submits that the applicants are neither concern with the said purchase of land bearing Survey No. 24/6 of Rabab Bai nor they are concern with the land of the complainant bearing Survey No. 24/1. They are neither seller nor purchaser in the alleged transaction. They have nothing to do with the parties. They were not named in the FIR. There is nothing on record to connect them with the crime except the memorandum statement of the seller of land bearing Survey No.24/6 Rabab Bai and Sakina recorded under Section 27 of the Indian Evidence Act. It is also argued that the dispute between the parties is of civil nature. The complainant has filed a civil suit against the purchaser of the land bearing Survey No. 24/6. In that civil suit also, no allegation was even made against the present applicants by Santosh.

The respondents Santosh in the suit filed an application under Order 26 Rule 9 CPC for demarcation of the land purchased by him and the said application was allowed. Till the date no allegation was made by the complainant against the petitioners. Only after the death of Santosh on 05.02.2020, application was filed by the complainant making allegation against the applicants and on that basis the offences under Section 467, 468, 471 of IPC have been added, whereas earlier FIR was registered under Section 420 of IPC. There is no document to establish prima facie the allegations of forgery or fabricated by the petitioners.

5) Learned senior counsel for the applicants submits that there is a dispute of demarcation, location and boundaries of their respective lands between the seller, purchaser and the complainant. They have been falsely implicated in the case. It is argued that the FIR has been registered merely to harass and prosecute the accused and, therefore, FIR is liable to be quashed. In support of his submission, he placed reliance on a judgment passed by the Supreme Court in the case of *Sarabjit Singh vs. State of Punjab* (2013) 6 SCC 800. He referred to para 14, 16 & 17 of this judgment. He further argued that civil disputes have been given colour of criminal proceedings cannot become weapon of harassment. In support of this submission, he placed reliance on the following judgments:-

- (i) ***Randheer Singh vs. State of U.P., 2021 SCC OnLine SC 942***
- (ii) ***Mitesh Kumar & Anr. Vs. State of Karnataka & Ors.,***

2021 SCC OnLine SC 976

- (iii) *Syed Yaseer Ibrahim x State of U.P., 2022 SCC OnLine SC 271*
- 6) Learned counsel for the State and the Objector submitted the availability of latest trace map showing demarcation of the distinct land bearing survey No. 24/1 and 26/6, a very old map of year 1984 was annexed with the sale deed. In this map, parts of the land bearing Survey No. 24/1 and 24/6 had not been shown.
- 7) Counsel for the Objector has further drawn attention of this Court to the photographs to show his own land and the land of Rabab Bi to show that how the lands have been manipulated. He also referred photocopy of a Bhu Adhikar Pustika wherein it is mentioned at the top of the first page "*Prarthi Kramank 1, 2 va 3 Roopvarsha, Sunil Gandhi*". It shows that the applicants had already filed a complaint to the Police Station – Salakhedi Chowki, Station Road, Ratlam and to the Superintendent of Police, Ratlam alleging that the applicants along with the other accused altered / changed the location of two plots of land bearing Survey No. 24/1 & 24/6 in the official records and used other forged documents including an old revenue map of 1988 to create a false impression that the plot of land at Survey No. 24/6 was situated on the location and site of Plot No. 24/1. The applicants have been forcibly sought to take over the physical possession of the applicant's plot at Survey No. 24/1 on the basis of forged and manipulated documents. The complaint made to the police station and Superintendent of Police has been annexed along with the objection. It is

alleged that the Objectors came to know on 04.01.2019 that the applicants along with Sakina Bi/Rabab Bai and Santosh (dummy purchaser) had plotted a fraudulent scheme by forging material documents in respect of the subject land and had registered a sale deed in respect of Survey No. 24/6 supported by outdated and fraudulent documents (copy of the registered sale deed dated 04.01.2019). He referred to the various documents filed along with the objection and submits that the essentials of the charge under Section 420 of IPC in which the applicants' dishonest intention to deceive the objectors by posing Survey No. 24/6 as Survey No. 24/1 by using fraudulent photographs and maps in order to procure illegal commercial gains is apparent on the face of record. He submitted that prima facie on the face value of the allegations and investigation, the material is available to constitute the ingredients of the alleged offences. The charge-sheet has already been filed and the case is at the stage of cross-examination of the prosecution witnesses, therefore, the petition is liable to be dismissed. In support of his submission, he has placed reliance on the following judgments:-

- (i) ***State of Telangana vs. Habib Abdullah Geelani***, 2017(2) SCC 779
- (ii) ***State of Haryana vs. Bhajanlal***, AIR 1992 SC 604
- (iii) ***Achal Ramesh Chourasia vs. State of M.P. & Ors.***, MPHC (Indore Bench) MCRC No. 20916/2017, Order dtd. 13.08.2018

8) He further submitted that the scope of High Court for quashment of the charge-sheet is very limited. In support of this contention, he placed reliance on the following judgments:

- (i) *State of H.P. vs. Prithi Chand & Anr. (1996) 2 SCC 37*
- (ii) *Harsh Khurana vs. Union of India & Anr. (2005) SCC OnLine Del 669*
- (iii) *Vijay & Anr. Vs. State & Anr. Delhi HC- Crl. M.C. No. 1860-261 of 2006, Order dated 28.02.2008*
- (iii) *Tej Pal Singh vs. The State of NCT of Delhi & Ors. Delhi HC- W.P. (Crl.) No. 1789 of 2006 Order dated 23.05.2008*

9) He also relied on an judgment passed by this Court in MCRC No. 33397/2021 (Deepak Garg vs. State of MP & Anr.) whereby the Court dismissed the petition under Section 482 of Cr.P.C. for quashing of the charges on the ground that on the face value of the FIR and documents, the material evidence is available.

10) The Apex Court has considered the scope and ambit of Section 482 Cr.P.C for quashment of FIR, complaint and criminal proceedings in the following judgments:-

In *Kamaladevi Agrawal Vs.State of W.B. (2002) 1 SCC 555*, the Apex Court opined:

“This court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at their face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction.”

In the case of ***R.Kalyani Vs. Janak C.Mehta, (2009) SCC 516***, the Apex Court laid down the law in the following terms:

“15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and , in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.”

11) The aforesaid legal position has been reiterated in the case of ***Mahesh Chaudhary Vs. State of Rajasthan and another (2009) 4 SCC 439***. Relevant paras 11 and 12 are reproduced as under:

“11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceedings is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.”

12. It is also well settled that save and except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. Although allegations contained in the complaint petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused.”

12) In the case of ***Amit Kapoor vs. Ramesh Chander and another, (2012) 9 SCC 460***, the Apex Court has culled out certain principles to be considered for proper exercise of jurisdiction with regard to quashing of the charge either in exercise of power under Section 397 or Section 482 of the Cr.PC, or together, as the case may be. The principles laid down by the Apex Court in paras 27.1, 27.2, 27.3 and 27.6 are reproduced as under:

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of the rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. *The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

Xx xx xx xx

Xx xx xx xx

27.6. *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.”*

13) The same view has been reiterated by the Apex Court in a latest judgment of ***Asian Resurfacing of Road Agency Pvt.Ltd. and another. Vs. Central Bureau of Investigation, AIR 2018 SC 2039.***

Para 100 reads as under:

*“100. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide ***State of Karnataka V. L. Muniswamy (1997)2 SCC 699***; (***AIR 1977 SC 1489***) ***All India Bank Officers’ Confederation V. Union of India (1989) 4 SCC 90***; (***AIR 1989 SC 2045***) ***Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia****

(1989) 1 SCC 715) State of M.P. Vs. Krishna Chandra Saksena (1996) 11 SCC 439) and State of M.P. Vs. Mohanlal Soni (2000) 6 SCC 338): (AIR 2000 SC 2583)''

14) Relying on the aforesaid judgments a division bench of this Court at Jabalpur in *M.Cr.C. No.51211/2018 Nandlal Gupta Vs.Union of India* held that High Court's power to quash criminal proceedings should be exercised sparingly and rarest of rare cases. Reliability of allegations made in the FIR or complaint not to be examined. The division bench further held the scope of interference u/Ss.482 for quashing of charger sheet, High Court should not unduly interfere. No meticulous examination of the evidence is needed at this stage. The court has to see as to whether the material brought on record reasonably connects the accused with the offence. Nothing more is required to be noted.

15) In the light of enunciation of aforesaid law and in the facts and documents annexed along with the record, prima facie the allegations are available that the certain revenue official records were altered/changed at the instance of the applicants' and with an intention to deceive the objectors by posing survey No. 24/6 as Survey No. 24/1 which is evident from the various photographs, revenue record etc., the criminal proceedings cannot be quashed merely because the nature of dispute is primarily of civil nature. The Apex Court in the case of *Mahesh Chaudhary vs. State of Rajasthan, (2009) 4 SCC 439* held that criminal prosecution cannot be quashed because of the primary nature of civil in the case of forgery and fraud, because in such cases there was always be some element of civil nature. Further the charges have already been framed and the case is at the stage of recording cross-examination of the prosecution witnesses.

16) In the light of the aforesaid enunciation of law and the facts, I am not inclined to interfere with the FIR and the criminal proceedings in a petition under Article 482 of the Cr.P.C. Both these petitions are **dismissed**.

(VIJAY KUMAR SHUKLA)
JUDGE

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