

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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 31st OF MAY, 2024

WRIT PETITION NO. 31367 of 2023

BETWEEN:-

1. **SHRI NITIN LALCHANDANI, S/O SHRI CHANDRABHAN LALCHANDANI, AGED ABOUT 43 YEARS, R/O 40-43 LAKSHMI VILLA IDGAH HILLS BHOPAL , M.P.
(ACCUSED NO. 1 IN THE LOWER COURT)**
2. **SMT. MAYA LALCHANDANI, W/O SHRI CHANDRABHAN LALCHANDANI, AGED ABOUT 67 YEARS, R/O 40-43 LAKSHMI VILLA, IDGAH HILLS, BHOPAL, M.P.
(ACCUSED NO. 2 IN THE LOWER COURT)**

.....PETITIONERS

(BY SHRI AJAY MISHRA – SENIOR ADVOCATE – ASSISTED BY SHRI SHASHANK MISHRA AND SHRI DHRUV VERMA - ADVOCATES)

AND

1. **THE STATE OF MADHYA PRADESH, THROUGH S.H.O. POLICE STATION RATIBAD, BHOPAL, ADDRESS POLICE STATION RATIBAD, BHOPAL (M.P.).**
2. **HARIMOHAN GUPTA, SON OF LATE SHRI GURUDEV GUPTA, AGED AROUND 65 YEARS, R/O 1 SOBHAGYA NILAY KERWA DAM ROAD MANDORI, BHOPAL, M.P.

(COMPLAINANT IN THE LOWER COURT).**

.....RESPONDENTS

(STATE BY SHRI ALOK AGNIHOTRI – GOVERNMENT

ADVOCATE)

**(COMPLAINANT BY – SHRI AJAY GUPTA – SENIOR
ADVOCATE – ASSISTED BY SHRI ASHUTOSH MAHAJAN –
ADVOCATE).**

.....
Reserved on: 02.05.2024

Pronounced on: 31.05.2024

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

Petitioners have filed this petition under Article 226 of the Constitution of India seeking quashing of charge sheet dated 10.12.2021 and consequently the FIR dated 23.03.2021 registered vide Crime No. 0123/2021 at Police Ratibad, Bhopal for the offence under Section 420 of the Indian Penal Code.

2. To answer the rival contentions of the parties, it is necessary to take the facts of the case into account, which lie in a narrow compass and are as under:

3. A written complaint was made on 23.03.2021 by the respondent No. 2 to the police alleging that the petitioners have committed fraud and cheated him in respect of a land situated at Kh. No. 78/1 for which he executed a sale agreement and asking that a case under Section 420 of IPC be registered against the petitioners and accordingly offence vide Crime No. 0123/2021 under Section 420 of IPC was registered against them on the same day.

4. As per the contents of FIR, respondent No.2 has claimed himself to be the President of Jagran Social Welfare Society, Bhopal and according to him the society is running an educational institution situated at Village Chandanpura over Kh. Nos. 83/2/Kha, 83/2/Ga,

83/2/Gha and 83/2/Da total area 25 acres. The institute was in need of more land for its development and expansion and since Nitin Lalchandani and Maya Lalchandani (petitioners) were having 36 acres of land in their share over Kh. No. 78/1 at village Chandanpura out of total land of 54 acres of Kh. No. 78/1, therefore in the year 2007 negotiation between them was done for purchase of 25 acres of land out of 36 acres of land belonging to petitioners. Thereafter, they entered into an agreement which was executed on 07.01.2008 and the petitioners agreed to sell the land to respondent No. 2 on consideration of Rs.7,75,000/- per acre out of which Rs. 2,51,000/- was paid through Cheque No. 636481 dated 17.12.2007 and Rs. 2,40,000/- was paid through cheque No.636482 dated 14.01.2008. Alongwith the agreement, location of the land was also shown in the map attached with the said agreement, but later on, according to respondent No. 2, the petitioners, with intention to cheat him, moved an application before Naib Tahsildar for Batan and on their application a case was registered as Case No. 004/A-27/10-2011. According to respondent No.2, petitioners got the location of their land changed and as such they tried to frustrate the very agreement of sale of land. As per the respondent No.2, neither the amount paid by him to the petitioners is being refunded nor agreement is being implemented and such Batan, according to respondent No.2, was made with intention to cheat him.

5. A civil suit has also been filed by the respondent No.2 for specific performance of contract and permanent injunction against the petitioners which is pending before the VI Additional District Judge, Bhopal and registered as RCS No. 1066-A/2012.

6. As per the petitioners, in the agreement itself it is stipulated that the property in question is also under some dispute and that proceeding

is pending before the High Court of Madhya Pradesh and despite that respondent No.2 entered into an agreement to purchase 25 acres of land out of 36 acres of the land of the petitioners. It is mentioned in the petition that at the time of entering into the agreement, there was no Batan of the total area of Kh. No. 78/1 i.e. 54 acres and therefore demarcation application was filed to get the land of the petitioners i.e. 18 acres each demarcated. It is also averred in the petition that as per the terms and conditions of the agreement, the total amount was to be paid within a period of two months but it was not paid and as such agreement stood cancelled. As per the petitioners, the time was essence of the agreement, but no payment was made by the respondent in lieu of the amount of sale consideration within the time stipulated in the agreement and therefore no case is made out against the petitioners of cheating.

7. Written statement in the civil suit was also filed denying the plaint averments stating that the cause of action had arisen on 27.12.2008 and plaint was filed in the year 2012 and, according to the petitioners, the suit was hopelessly barred by time. It is also averred by the petitioners that the agreement dated 07.01.2008 is itself silent about the four boundaries of 25 acres of land. It is also averred in the petition that the Batan of Kh. No. 78/1 of 36 acres of land belonging to the petitioners got done vide order dated 05.09.2011 and incorporated accordingly in the revenue map and also in the revenue record. The said Batan was also challenged by the respondent No. 2 before the court of Sub Divisional Magistrate and his appeal was dismissed vide order dated 02.02.2021 but in the FIR, all these facts have been suppressed by the respondent No.2. It is averred in the petition that the respondent No. 2 has suppressed material facts relating to the civil suit and the orders passed by the revenue authorities and correction of revenue record accordingly

and even after challenging the order of Batan before the revenue authority and dismissal of the challenge at every stage made the order of Batan absolute. The order of Batan has also been challenged by the respondent No. 2 by making consequential amendment in the civil suit and as such offence of Section 420 of IPC is not made out because after failing in civil litigation, the respondent No. 2 is trying to give a different colour to the same and initiating criminal prosecution, which, according to the petitioners, is not permissible. As per the petitioners, even otherwise the fraud alleged against them is not made out for the reason that the agreement between the parties in respect of sale of land executed by the respondent No. 2 in an individual capacity whereas the institution for which the land was required is a cooperative society and as such it is not factually correct that the respondent No. 2 purchased the land for the development of society. It is averred that respondent No. 2 is a President of the society and deliberately he is carving out a case that the agreement to sale got done for the society whereas respondent No. 2 executed the agreement for sale of land for which he had no fund available. As per the petitioners, it is purely a case of civil dispute and civil suit is also pending, the Batan done has also been accepted by the respondent No. 2 during recording of statement in the civil suit and as such no criminal case is made out against the petitioners. It is submitted that the order of Batan passed in the year 2011 and it was very much in the knowledge of respondent No.2, despite that no complaint was made to the police and it was made only when he realized that in a civil suit he would get nothing and then only to create pressure upon the petitioners he made false complaint against the petitioners to colour the civil dispute into a criminal case, which, according to the petitioners, is not permissible and the claim of the respondent No. 2 is absolutely barred

by time and even the complaint at this belated stage cannot be entertained and FIR as such is liable to be quashed on this ground alone.

8. Shri Gupta appearing for the respondent No. 2 has submitted that the agreement, which is available on record contains a map and that map very clearly indicates that the land purchased by the petitioners was 36 acres out of total 54 acres of land and 18 acres remaining land belonged to Ratan Lalchandani. The land of the petitioners and its location is very clear from the map attached with the agreement showing that the land purchased by them was vertically divided into 18-18 acres each and out of that, complainant/respondent No.2 agreed to purchase 25 acres and as per the map it is clear that 25 acres of land was adjoining to the land of the society i.e. Jagran Social Welfare Society, Bhopal and because they wanted to expand the activities of the society in educational field as such only that land was useful for them, therefore the respondent No. 2 entered into an agreement with the petitioners and paid advance amount. It is also pointed out by Shri Gupta that out of 36 acres of land vertically, for 25 acres of land, which is marked as ABCD, agreement was executed between the parties, but after lapse of time when the land cost increased, the petitioners intention stood changed and with intent to cheat respondent No.2, they moved an application of Batan showing location of their land horizontally and the land for which agreement was executed i.e. 25 acres out of 36 acres of the land of the petitioners, the respondent No. 2 had to go horizontally and as such total 25 acres of land horizontally adjoining to the land of the society was not available after Batan. According to learned counsel, with the intention of fraud the petitioners moved an application of Batan and thereafter Batan took place and grievance was shown by the respondent No.2 challenging the said order of Batan but finally when he failed to get any order in his

favour, he made a complaint to the police about the cheating committed by the petitioners. He has submitted that sufficient explanation has been given by the respondent No. 2 for delay because he made all possible attempts to get the order of Batan set aside but on failure he has also initiated criminal proceeding. Learned counsel has also submitted that merely because in the statement recorded in civil suit something has been admitted does not mean that the said admission has wiped out the conduct of the petitioners. He has submitted that at this stage this Court is not required to examine that aspect and is also not required to conduct a mini trial, however the Court has to see whether the ingredients of FIR constitute an offence of cheating or not. He has also submitted that merely because a civil suit is pending does not mean that the offence of cheating has not been committed by the petitioners and criminal prosecution cannot be initiated.

9. Both the parties have placed reliance upon series of judgments so as to prove their stand.

10. Learned counsel for the petitioner has cited the following case laws:

1. **(2009) 7 SCC 712 – Harmanpreet Singh Ahluwalia and others vs. State of Punjab and others.**
2. **(2009) 8 SCC 751 – Mohammed Irahim and others vs. State of Bihar and another.**
3. **(2022) 15 SCC 164 – Hasmukhlal D. Vora and another vs. State of Tamil Nadu.**
4. **2023 SCC OnLine SC 950 – Mahmood Ali and others vs. State of U.P. and others.**
5. **2023 SCC OnLine SC 90 – Usha Chakraborty and another vs. State of West Bengal and Another.**
6. **2023 SCC OnLine MP 4592 – Kalyan Sunder vs. State of Madhya Pradesh and another.**

11. At the same time, learned counsel for the respondent No. 2 has

also cited the following case laws:

1. **(2005) 4 SCC 370 – Iqbal Singh Marwah and another vs. Meenakshi Marwah and others.**
2. **(2002) 1 SCC 555 – Kamaladevi Agarwal vs. State of W.B. and others.**
3. **(2009) 5 SCC 528 – Syed Askari Hadi Ali Augustine Imam and another vs. State (Delhi Administration) and another.**
4. **(2008) 5 SCC 765 – P. Swaroopa Rani vs. M. Hari Narayana Alias Hari Babu.**
5. **(2001) 8 SCC 645 – M. Krishnan vs. Vijay Singh and another.**
6. **WP No. 2404/2023 – Hari Mohan Gupta vs. Ministry of Home & others** decided on 2nd of September, 2023.

12. As per the contention raised by the learned counsel for the petitioner, the impugned FIR can be quashed on the ground of delay. He has also contended that the FIR is also liable to be quashed on the ground that it has been filed to colour a civil dispute into a criminal dispute. He has submitted the dispute is purely of civil nature and therefore FIR deserves to be quashed because civil suit is also pending between the parties. He has also contended that in view of the admission made by the respondent No.2 in his statement recorded in the pending civil suit accepting Batan and admitting that the said Batan is proper, no FIR could have been entertained.

13. On the other hand, Shri Gupta has submitted that even when a civil suit is pending, FIR can also be registered and criminal prosecution can be initiated because there is no bar for initiating both the proceeding simultaneously. He has also submitted that there is no delay in lodging the FIR because the delay has been properly explained. He has also submitted that pendency of a civil suit and proceeding therein does not create any bar and cannot be a ground to quash the FIR because scope of

initiating both the proceeding is distinct and appreciating evidence in both the proceeding is also different and therefore according to him, petition is misconceived and it merits dismissal.

14. I have heard the rival contention of learned counsel for the parties and also perused the record. The challenge of the petitioners for quashing the FIR is based upon the contention firstly that it can be quashed on the ground of delay and secondly on the ground that it is purely a civil dispute but has been given a colour of criminal dispute.

15. As far as alleged fraud is concerned, that has arisen from the date when application for Batan was filed and that got done by the authority vide order dated 05.09.2011, however no FIR was lodged till 2021, whereas, as alleged, during Batan petitioners had fraudulently changed the location of their land.

16. The petitioners have relied upon the judgment in case of **Hasmukhlal D.Vora (supra)** in which the Supreme court has observed as under:-

“22. There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in *Bijoy Singh v. State of Bihar* [*Bijoy Singh v. State of Bihar*, (2002) 9 SCC 147 : 2003 SCC (Cri) 1093] , inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below : (SCC p. 153, para 7)

“7. ... Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it.”

Emphasis supplied

23. In the present case, the respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show-cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.

24. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.

Conclusion

27. It must be noted that the High Court while passing the impugned judgment [Hasmukhlal D. Vora v. State, 2021 SCC OnLine Mad 16534] has failed to take into consideration the facts and circumstances of the case. While it is true that the quashing of a criminal complaint must be done only in the rarest of rare cases, it is still the duty of the High Court to look into each and every case with great detail to prevent miscarriage of justice. The law is a sacrosanct entity that exists to serve the ends of justice, and the courts, as protectors of the law and servants of the law, must always ensure that frivolous cases do not pervert the sacrosanct nature of the law.”

17. However, counsel for the respondent has explained the delay saying that it is not a case in which the respondent did not show any grievance with respect to the Batan as got done by the petitioners. The respondent challenged the order of Batan before the revenue authority so as to get the said order set aside but when nothing was done in his favour and the order of Batan passed by the revenue authority was approved by the higher authority then only he filed an FIR alleging that the petitioners have committed fraud so as to cheat him and to make the agreement of sale redundant. As such, it is not a case in which delay has not been explained by the respondent and it is for the trial court to consider whether explanation given by the respondent is sufficient or not. He has submitted that this Court in a petition filed under Article 226 of the constitution of India seeking quashing of FIR will not conduct a

mini trial so as to ascertain that explanation given is sufficient or not.

18. Learned counsel for the petitioners has principally asserted that a civil suit has been filed by the respondent and statements of some of the witnesses have also been recorded and as such he has tried to establish that it is purely a dispute of civil nature and when civil suit is pending before the parties then giving shape to the same of a criminal prosecution and lodging FIR is not appropriate. To weigh his assertion, learned counsel has placed reliance upon the case of **Mahmood Ali (supra)** in which the Supreme Court observed as under:-

“11. The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : AIR 1992 SC 604. The parameters are:—

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that

there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 resply of Bhajan Lal (supra).

13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take

into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

19. Learned counsel for the petitioner has further placed reliance in the case of **Usha Chakraborty (supra)** in which the Supreme Court has observed as under:

“3. It is to be noted that the aforesaid crime was registered pursuant to the forwarding of an application filed by the respondent herein under Section 156(3) Cr. P.C. raising the allegation against the persons named therein including the appellants, by the learned Magistrate for investigation and thereupon, investigation was commenced. The appellants herein assailed the very order for forwarding of the application for investigation under Section 156(3) Cr. P.C., the consequential registration of the said F.I.R. and also the ongoing investigation pursuant thereto, raising various contentions that the application moved by the respondent herein before the learned Magistrate did not disclose commission of any cognizable offence, that the allegations in the complaint are actuated by mala fides, that the allegations would reveal that they pertain to pure civil dispute between the parties and in fact the respondent did resort to civil remedies, that he failed in obtaining favourable order in interlocutory applications moved in a duly instituted suit and upon its frustration and as a tool for oppression and harassment he moved the application which culminated in the registration of the F.I.R. without disclosing the crucial aspects that in respect to the subject matter the suit instituted by him viz., Title Suit No. 363/2015 carrying the prayers for a declaration that he is the secretary of the schedule school and also for a permanent injunction restraining defendant Nos. 1 and 2 therein viz., the appellants herein, and their men, agents and associates from procuring and/or creating any document illegally and/or from obstructing him in representing as the Secretary of the Managing Committee, is pending before the First Court Civil Judge (Junior Division) at Barasat. It is also contended therein that the respondent herein had suppressed certain further aspects viz., that much before the filing of the application based on which the F.I.R. was registered he was removed from the

post of Secretary and in fact, from the membership of the very Board of Trustees. Initially, he moved the office of Labour Commissioner raising grievances against such removal from the office of the secretary before instituting the stated suit. The impugned order would reveal that upon forming the opinion on perusal that they would prima facie make out a case for investigation, the High Court declined to exercise the jurisdiction under Section 482 Cr. P.C. It would also reveal that the crucial and relevant contentions raised by the appellants were not at all considered by the High Court. Hence, necessarily, the question to be decided is whether the High Court was justified in declining to invoke the power under Section 482 Cr. P.C. to quash the order dated 05.04.2017 for forwarding the application filed by the respondent herein carrying allegations qua the appellant for investigation under Section 156(3), Cr. P.C., the consequential registration of the F.I.R. and the investigation pursuant thereto qua the appellant, in the facts and circumstances of the case and in view of the settled position in the matter of exercise of inherent powers under Section 482, Cr. P.C.”

20. Learned counsel for the petitioners has submitted that for constituting an offence under Section 420 of IPC, the elements of cheating, which is a condition precedent, should be present from the very inception of act alleged to have been done by the accused to cheat the complainant. He has submitted that it is not a case in which from the very inception the elements of cheating were present because in the statement of complainant in civil suit he has admitted the fact that Batan as done on the application of the petitioners was proper. He has placed reliance in the case of **Kalyan Sunder (Supra)** in which the High Court observed as under:

“19. Considering the rival contentions of counsel for the parties and on perusal of record, I am of the opinion that dispute in question arising out of a contract and in the said contract there is a specific remedy available i.e. Arbitration if any dispute arises. Indisputably, the contract was terminated on 04.04.2018 and the FIR was lodged on 09.07.2020 and no explanation was given as to why even before terminating the contract or immediately after terminating the contract, FIR could not be lodged. It is also

not clear as to what role has been played by the petitioner and there is no material produced by the respondents to indicate that there was any transaction took place to show that the amount collected from the users has not been deposited in the escrow account.

20. It is also something surprising that when agreement itself contained a clause for conducting a joint traffic survey/sampling as to why it was not done and only on the basis of one sided report, allegations made against the petitioner. From perusal of FIR, it is clear that the police registered the offence only because there was an opinion of the Advocate General and it clearly reveals that police neither examine the fact that the dispute is of civil nature and the allegations made against the petitioner are having no foundation nor any incriminating material collected and produced by the complainant before the police so as to initiate criminal proceeding against the petitioner. In case of Bhajanlal (supra) the Supreme Court has categorized the circumstances under which if offence is registered, it can be quashed. Paragraph 102 of the said judgment has given the categories which are as under:—

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of

Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

XXXXXXXXXX

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.”

(emphasis supplied)

21. In support of his submission, learned counsel for the petitioners has also placed reliance in the case of **Mohammed Ibrahim (supra)** in which the Supreme Court has observed that when dispute is of civil nature, filing a criminal complaint is nothing but an abuse of process of law and it is the duty of the Court to check it. The Supreme Court has also observed that it is not that in every matter when civil dispute is involved, the ingredients of criminal offence are missing. The Supreme Court has also observed that there is no bar to initiate both the proceedings if the ingredients of initiating criminal proceeding are available.

22. In **Harmanpreet Singh Ahluwalia (supra)** the Supreme Court quashed the complaint initiated by the wife to harass the husband and the in-laws due to matrimonial differences saying that under special circumstances the High Court can exercise the discretion under Section 482 of Cr.P.C.

23. Learned counsel for the petitioners during the course of argument has drawn attention of this Court towards certain facts that came in the pending civil suit saying that complainant/plaintiff has accepted the Batan and its order dated 02.11.2016. He has also drawn attention of this

Court saying that when the agreement was in the name of the society then as to how the complainant became successor of the society and having grievance to file complaint is something surprising. He has also tried to establish the said fact by stressing upon the statement recorded in the civil suit that the society did not have any amount to pay the seller and to execute the sale deed. He has submitted that when it is accepted by the complainant/plaintiff that the order of Batan dated 02.11.2016 was in his knowledge despite that till 2021 i.e. after almost five years, the complainant was sitting silent and no FIR was lodged.

24. To establish his case and also to counter the contentions raised and the case laws referred in support thereof by the learned counsel for the petitioner, the learned counsel for the respondent has submitted that although the dispute arisen out of a contract but cheating and the intention to cheat the respondent, who was one of the parties of the contract, was well in the mind of the petitioners and that started when the Batan was got done by the petitioners changing location of their land so as to cheat and deprive the respondent from getting the benefit of the agreement. He has drawn attention of this Court towards the map of the land showing its boundaries for which the said agreement of sale was executed but in Batan the petitioners intentionally changed the boundaries and location of the land because of sudden hike in the price of the land. Counsel for the respondent has shown the map attached with the agreement showing location of land vertically but in the application of Batan location of their land deliberately changed showing it horizontally. Thus, it can be said with certainty that out of greed an idea developed in the mind of the petitioners to cheat the respondent by changing the location of the land and to make the agreement to sale ineffective.

25. To set up his claim, learned counsel for the respondent has placed reliance upon the following cases:

Iqbal Singh Marwah (supra) in which the Supreme Court observed as under:

“32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint under Section 476 of the old Code, the following observations made by a Constitution Bench in *M.S. Sheriff v. State of Madras* [1954 SCR 1144 : AIR 1954 SC 397 : 1954 Cri LJ 1019] give a complete answer to the problem posed: (AIR p. 399, paras 15-16)

“15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered under Section 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.””

Kamaladevi Agrawal (supra) in which the Supreme Court observed as under:

“17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.”

Syed Aksari Hadi Ali Augustine Imam (supra) in which the Supreme Court observed as under:

“21. Indisputably, in a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case. The question as to whether in the facts and circumstances of the case one or the other proceedings would be stayed would depend upon several factors including the nature and the stage of the case.

22. It is, however, now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. The law in this behalf has been laid down in a large number of decisions. We may notice a few of them.”

P. Swaroopa Rani (supra), in which the Supreme Court observed as under:-

“10. The High Court indisputably is a final court of fact. It may go into the correctness or otherwise of the findings arrived at by the learned trial Judge. A fortiori it can set aside the findings of the court below that Ext. A-15 is a forged document or its authenticity could not be proved by the respondent.

11. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case. (See *M.S. Sheriff v. State of Madras* [AIR 1954 SC 397] , *Iqbal Singh Marwah v. Meenakshi Marwah* [(2005) 4 SCC 370 : 2005 SCC (Cri) 1101] and *Institute of Chartered Accountants of India v. Assn. of Chartered Certified Accountants* [(2005) 12 SCC 226 : (2006) 1 SCC (Cri) 544] .)

13. Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute.

14. The High Court, therefore, in our opinion, was not correct in staying the investigation in the said matter.

18. It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible.”

M. Krishnan (supra), in which the Supreme Court observed as under:-

“4. Despite referring to various judgments of this Court relating to the interpretation and scope of Section 482 of the Code and the indictment that the High Court should be slow in interfering with the proceedings at the initial stage, the learned Single Judge of the High Court passed the impugned order. The High Court appears to have been impressed by the fact that as the nature of the dispute was primarily of a civil nature, the appellant was not justified in resorting to the criminal proceedings.

5. Accepting such a general proposition would be against the provisions of law inasmuch as in all cases of cheating and fraud, in the whole transaction, there is generally some element of civil nature. However, in this case, the allegations were regarding the forging of the documents and acquiring gains on the basis of such forged documents.

The proceedings could not be quashed only because the respondents had filed a civil suit with respect to the aforesaid documents. In a criminal court the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. Had the complainant failed to prove the allegations made by him in the complaint, the respondents were entitled to discharge or acquittal but not otherwise. If mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks. The onus of proving the allegations beyond reasonable doubt, in a criminal case, is not applicable in the civil proceedings which can be decided merely on the basis of the probabilities with respect to the acts complained of. The High Court was not, in any way, justified to observe:

“In my view, unless and until the civil court decides the question whether the documents are genuine or forged, no criminal action can be initiated against the petitioners and in view of the same, the present criminal proceedings and taking cognizance and issue of process are clearly erroneous.”

6. Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties.

9. Right from the case of *R.P. Kapur v. State of Punjab* [AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in

proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. The impugned judgment being contrary to the settled position of law is thus not sustainable. The appeal is allowed and the impugned judgment of the High Court is set aside by upholding the order of the trial Magistrate dated 3-8-1998. The trial Magistrate shall now proceed in the matter in accordance with law.”

And at the end learned counsel for the respondent has submitted that thus it is clear from the case laws referred hereinabove that it is not a strict rule of law that if a civil suit is filed for a dispute between the parties, criminal prosecution cannot be initiated for the same dispute. He has submitted that the trial court after recording statements will consider the aspect that whether under the existing circumstances apart from civil litigation the material ingredients for initiating the criminal proceeding are also available or not.

26. Thus, after giving thoughtful consideration to the arguments advanced by the learned counsel for the parties and the case laws referred hereinabove on the issue, this Court has to see whether under the existing circumstances when a civil suit is pending and dispute arisen out of a contract i.e. an agreement to sale, a criminal proceeding can be initiated by the respondent or not.

27. Taking note of enunciation of law by the Supreme Court in the cases cited hereinabove, to all intents and purposes i.e. in all important respect, the Supreme Court has observed on both sides. On one hand, the Supreme Court has observed about growing tendency of the complainants attempt to give the cloak of a criminal offence to matters

which are essential and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment and hence the Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. The Supreme Court has also observed that the Court while exercising its jurisdiction under Section 482 or Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected. The Supreme Court in one of the cases cited by the petitioner relied upon a decision rendered in the case of **R.P. Kapur v. State of Punjab, AIR 1960 SC 866** in which the Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings. But, on the other hand, the Supreme Court has also observed that the standard of proof required in the two proceedings i.e. civil cases and the criminal case are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. The Supreme Court has also observed that criminal proceedings should not be quashed merely because of pendency of civil proceedings between the same parties, even if it is pending in a higher court. Nature, scope and standard of proof required in civil and criminal proceedings are distinct and inherent power should be exercised by the courts sparingly. It is also observed by the Supreme Court that several disputes

of civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. The civil proceeding as also a criminal proceeding can proceed simultaneously. Thus it is clear that merely because a civil suit is pending, criminal prosecution is no bar. When there is no specific bar for initiating criminal prosecution, the cause for prosecution has to be seen by the trial court. In the case at Bar, an agreement to sale was executed between the petitioners and respondent No.2 and the petitioners agreed to sell 25 acres of land out of their total share of 36 acres to respondent No.2. Alongwith the agreement, a map was also attached showing location of the land. Thereafter, an application for Batan was moved by the petitioners before the Naib Tahsildar and the Batan got done vide order dated 05.09.2011 and incorporated accordingly in the revenue record whereby the petitioners got the location of their land changed i.e. location and boundaries of the land in question got changed from vertical to horizontal which indicates that the petitioners have done so with an intention to cheat the respondent No.2 because the location of the land in question after Batan is not similar to that of the land which has been shown in the agreement to sale and the map attached thereto and this act of the petitioners has given rise to a criminal proceeding. Under such circumstances and on the basis of material available on record, *Prima-facie* I am of the opinion that the boundaries shown in the agreement to sale are not similar to the boundaries shown in the application of Batan and the changed location of land definitely frustrates the very object of entering into an agreement because, as has been contended by the respondent No.2/complainant, the land for which the agreement got executed was adjoining to the land of the society. As such in view of the settled legal position on the issue, I

am of the view that at this stage it does not seem apposite to quash the FIR because this Court is not supposed to conduct a mini trial exercising power under Article 226 of the Constitution. *Prima-facie* in the opinion of this Court it is also not a case that the material available and the contents of FIR are not sufficient to constitute an offence for which criminal case has been registered. Thus, in my opinion, petition is misconceived and as such no case is made out for quashing the FIR.

28. In the result, petition fails and is hereby **dismissed**.

(SANJAY DWIVEDI)
JUDGE