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

**BEFORE
HON'BLE SMT. JUSTICE NANDITA DUBEY**

ON THE 26th OF APRIL, 2023

WRIT PETITION No. 5645 of 2023

BETWEEN:-

**VIRENDRA PATEL S/O BHAGWAN SINGH PATEL, AGED
ABOUT 46 YEARS, GRAM SALIWADA, MANDLA ROAD,
JABALPUR (MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI KISHORE SHRIVASTAVA - SENIOR ADVOCATE WITH SHRI
SHASHANK VERMA AND MS.AKSHITA MOHILAY - ADVOCATES)**

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH
STATION IN CHARGE BARELA POLICE STATION
JABALPUR JABALPUR (MADHYA PRADESH)**
- 2. DILIP MEHTA S/O LATE DHEERAJ MEHTA, AGED
ABOUT 67 YEARS, OCCUPATION: PROPRIETOR OF
RAJUL BUILDERS O/O RAJUL BUILDERS RAJUL
ARCADE RUSSEL CHOWK JABALPUR 482001
(MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI V.P. TIWARI - GOVT. ADVOCATE FOR RESPONDENT/STATE
AND SHRI SANKALP KOCHAR FOR RESPONDENT NO.2)**

*This petition coming on for admission this day, the court passed the
following:*

ORDER

This writ petition (criminal) under Article 226 of the Constitution of India has been preferred seeking quashment of the FIR dated 20.01.2023 registered at Crime No.41/2023 for the offence punishable under Sections 419, 420, 467, 468 and 471 of I.P.C. and all the subsequent proceedings and for interim relief not

to take any coercive action pursuant to the registration of FIR at Police Station Barela, district Jabalpur

2. The factual background giving rise to the present petition reveals that one Dilip Mehta (respondent No.2) lodged a written complaint against petitioner on 05.09.2022 at Barela Police Station stating therein that he is the owner of the property Khasra No. 279, area 1.66 hectares and khasra No.181, area 4.71 hectares, total area 6.37 hectares, situated at Saliwada, Jabalpur having purchased it by a registered sale deed dated 17.02.2016 from Mr. Bhagwan Singh Patel, husband of late owner Siyabai for a consideration of Rs. 3,15,00,000/-. It is further alleged that by using forged document claiming to be the owner, the petitioner had sold the said property to two other persons. On investigation it was found that the same property was earlier sold by petitioner on the basis of a fabricated power of attorney of late Siyabai to Girish Kuraiya on 12.06.2009 for a consideration of Rs.41,16,000/-, and later, on the basis of sale deed, the land was mutated in his name. Siyabai died in the year 2015. It is further alleged that the petitioner also prepared a bogus agreement to sale dated 21.01.2009 with Rakesh Gupta and Neeraj Jain with regard to the same land for a consideration of Rs.37,51,000/-. Rakesh Gupta and Neeraj Jain filed a suit for specific performance on 18.02.2022 before the competent court, alleging that the petitioner has failed to execute the sale deed. On appearance of petitioner, parties entered into a compromise and on the basis of this compromise a decree came to be passed in Lok adalat and thereafter execution was filed for execution of the order dated 14.05.2022. The sale deed got registered on 25.07.2022 by the order of the Court and accordingly mutation was carried out on 12.08.2022, thereafter an application for possession was filed. It is alleged that petitioner Virendra Amgavarker, impersonated as

Virendra Patel by using forged and bogus PAN Card and voter ID in the name of Virendra Patel, S/o Bhagwan Singh Patel for execution of the aforesaid documents and thereby cheated and caused financial loss to respondent No.2 and to one Girish Kuraiya. On the basis of this complaint, FIR came to be registered under Sections 419, 420, 467, 468 and 471 of I.P.C. against the petitioner.

3. Shri Kishore Shrivastava, learned Senior Counsel appearing for the petitioner has taken this Court through various documents, filed with the writ petition to urge that the dispute between the parties is of civil nature, whereas respondent No.2 is trying to give it a criminal colour. It is stated that petitioner is the adopted son of late Siya bai, the original owner of the disputed property, who not only executed a power of attorney in favour of petitioner on 29.11.2008 but also executed a Will (Annexure P-5) in his favour. The petitioner being power of attorney holder, executed a sale deed in favour of one Girish Kuraiya on 12.06.2009. An agreement to sale was also entered into by the petitioner with Rakesh Gupta and Neeraj Jain. Since the petitioner failed to perform the agreement, a suit for specific performance RCS-A-229/2022 was filed by Neeraj Jain and Rakesh Gupta, where on appearance of petitioner, a compromise was entered between the parties and a decree was passed in Lok Adalat on 14.05.2022 and the sale deed got registered by the order of the Court. An application for possession was also filed, wherein respondent No.2 appeared and filed objections under Order XXI Rule 99 of C.P.C., raising all such objections as alleged in the FIR and prayed for setting aside of the order dated 14.05.2022 alleging that the same has been obtained by fraud, on which status quo was ordered by the executing Court. It is stated that a writ petition

bearing No.22367/2022 was filed by respondent No.2, challenging the order dated 14.05.2022 and for registration of FIR on the ground that the same has been obtained by fraud. The said writ petition was, however, disposed of vide order dated 27.02.2023 directing the petitioner to avail the alternative remedy.

4. Learned Senior Counsel has further referred to the civil suit filed by the original owner Siya bai Patel seeking declaration that the sale deed executed in favour of Girish Kuraiya on the basis of alleged power of attorney is null and void and not binding on her. In this suit, respondent No.2 was also arrayed as a party. It is stated that Girish Kuraiya also filed a civil suit against original owner Siya Bai, which is pending adjudication. After the death of Siyabai in the year 2015, her husband Bhagwan Singh Patel was impleaded as her legal heir on 19.03.2015. It is stated that the present petitioner also moved an application to be impleaded as legal representative, claiming to be the adopted son of late Siyabai, on which, the trial Court has observed that whether the petitioner is the adopted son or not can only be decided after appreciation of evidence at the final stage. According to petitioner, in the said civil suit bearing No. RCS-29-A/2010, the title of Girish Kuraiya with respect to the property in dispute is in question, therefore, Girish Kuraiya cannot be said to be the owner of the property. It is stated that after the death of Siya Bai, Bhagwan Singh in collusion with Dilip Mehta executed a sale deed in respect to the same land with respondent No.2 despite knowing that the land has already been sold to Girish Kuraiya.

5. On the strength of afore-referred documents, it is argued that the present FIR is an abuse of the process of law. The dispute involved is purely a civil dispute, despite that, making false and vexatious allegations, FIR has been registered with ulterior motive to pressurize the petitioner and wreck vengeance

against him after the W.P. No. 22367/2022, filed by respondent No.2 was dismissed directing him to avail the alternate remedy. It is contended that civil suit filed by the parties are still subjudice and unless and until the same is decided, no criminal prosecution can be launched. It is contended that the allegations made in the FIR are also part of objection raised by respondent No.2 in his application under Order XXI Rule 99 of C.P.C. and the respondent No.2 is at liberty to contest the same in accordance with law.

6. To buttress his submissions, learned Senior counsel has relied on the following decisions, **State of Haryana and others Vs. Bhajan Lal and others 1192 Supp(1) SCC 335**, wherein the Supreme Court has held that extraordinary power under Article 226 of the Constitution of India could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, where a criminal proceeding is manifestly attended with malafide and for 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.

7. Referring to **Lalita Kumari Vs. State of U.P. and others (2014) 2 SCC 1**, it is next contended that the complaint was filed with an inordinate delay, under such circumstances, the police is duty bound to conduct preliminary enquiry prior to registration of FIR, however in the present case, without conducting any enquiry the FIR has been registered.

8. Learned counsel for the State on the other hand has vehemently opposed the contentions and prayed for dismissal of the petition. He has drawn attention to the fact that petitioner is absconding and permanent warrant of arrest has also been issued against him. Furthermore, proceedings under

Sections 82, 83 of Cr.P.C. have been initiated and owing to the initiation of proceedings, a reward is also announced against him. It is contended that on the one hand petitioner is not cooperating in the investigation and avoiding the arrest and on the other hand, without even waiting for enquiry to be concluded has approached this Court, filing a petition under Article 226 of the Constitution of India seeking quashment of FIR by passing the statutory provision under Section 482 of Cr.P.C., is not permissible, in view of the law laid down in the case of Dr. Anand Rai Vs. State of M.P. and others (W.P. No.7744/2022). It is argued that exercise of inherent power for quashment of FIR should be exercised sparingly and in the rare cases as at the stage of investigation, it cannot be said whether the State authorities will file a charge sheet against the petitioner or a closure report looking to the contents of complaint filed by the respondent No.2. Learned counsel has also referred to Lalita Kumari (supra) to contend that registration of FIR is mandatory under Section 154, if the information discloses commission of cognizable offence and no preliminary enquiry is permissible in such a situation.

9. Per contra, Shri Kochar, learned counsel for respondent No.2 has opposed the interim as well as the final prayer of the petitioner and has supported the arguments of the counsel for the State. He has raised a preliminary objection regarding the maintainability of the instant petition as investigation is just commenced and the charge sheet/final report has not yet been filed. It is further argued that criminal proceedings cannot be thwarted at the initial state merely because civil proceedings are pending and should be limited to extreme exceptions.

10. Reliance is further placed on **(2002) 1 SCC 555 Kamaldevi Agarwal Vs. State of W.B. and others** and wherein the Supreme Court has

opined that :

"7. 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 it at the 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."

It was furthermore observed that the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there would always be some element of civil nature.

11. It is argued that the petitioner was signatory to the agreement dated 28.12.2007, executed between Late Siya bai and respondent No.2 and was also aware of the pendency of two civil suits, being a party to both of them, however, connivingly with the intention of bypassing the pending litigation as well as defrauding and depriving the answering respondent from the property, fabricated the agreement to sale and conniving with Rakesh Gupta and Neeraj Jain, fraudulently got a decree passed through Lok Adalat. It is further submitted that case of petitioner does not fall under the category of guidelines framed by the Hon'ble Supreme Court in the case of **Bhajanlal Vs. State of Haryana** reported in **1992 Supp (1) SCC 335**.

12. Several other decisions were cited in support of the respective stand taken by counsel for the parties. However, being repetitive, it is unnecessary to refer to them.

13. No other ground has been raised or argued by the parties.

14. Heard the learned counsel for the parties and perused the record.

15. The issue whether the order for not arresting or not taking any coercive action can be passed in the proceedings under Section 482 of the Cr.P.C. or under Article 226 of the Constitution of India, pending investigation in to the matter came to be considered by the Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and other 2021 SCC online SC 135**, wherein the Supreme Court has laid down the guidelines as thus :-

80 (i)...(xv)

(xvi)while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or \hat{A} eno coercive steps to be adopted and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High

Court shall not and as such is not justified in passing the order of not to arrest and/or no coercive steps either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

16. In view of the law laid down, no such order for not taking any coercive action against the petitioner can be passed. Hence, the prayer for grant of interim relief is rejected.

17. It is well settled that in certain cases very same set of facts may give rise to civil as well as criminal proceedings and even if a civil remedy is availed by the parties, he is not precluded from setting in motion the proceedings in the criminal law. The remedies are not internally exclusive but co-extensive and essentially defer in their content, scope and import. [see **(2020) 4 SCC 552 K. Jagdish Vs. Udaya Kumar G.S.**].

18. In **Vijay Singh M. Krishnan v. Vijay Singh & Anr. (Criminal Appeal No. 1028 of 2001 decided on 11.10.2001)** the Supreme Court has observed that accepting such a general proposition that the transaction between the parties are of a civil nature and the criminal court cannot proceed with the complaint because the factum of document being forged was pending in the civil court would be against the provision 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 document 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 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.

19. The Hon'ble Supreme Court in the case of **Dinesh Bhai Chandu Bai Patel Vs. State of Gujarat and another (2018) 3 SCC 104** has considered the question as to when a registration of the FIR is challenged seeking its quashing by the accused under [Article 226](#) of the Constitution or [Section 482](#) of the Code and what are the powers of the High Court and how the High Court should deal with such question. The Supreme Court after referring to the principle laid down in **State of West Bengal and Ors. Vs. Swapan Kumar and Ors. (AIR 1982 SC 949)** has held thus :-

26. This Court in State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors. (AIR 1982 SC 949) had the occasion to deal

with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for Three Judge Bench laid down the following principle:

21..... the condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.

66. Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence.

29. The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any

FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

30. At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

20. In the case of **Mahesh Choudhary Vs. State of Rajasthan (2009) 4 SCC 439** the Supreme Court held thus :-

12. It is also well settled that save and except 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 Complaint Petition fulfill the ingredients of the offences alleged against

the accused.

21. From the aforementioned well settled principle of law, it is clear that the criminal prosecution cannot be quashed merely on the ground that the civil proceedings are pending.

22. In the case of **State of Orissa and another Vs. Saroj Kumar Sahoo, (2005) 13 SCC 540** the Supreme Court has observed that the inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.

23. Undisputedly, the petitioner has earlier sold the land in question to one Girish Kuraiya on 12.06.2009 as power of attorney holder of late Siyabai and also executed an agreement of sale with Rakesh Gupta and Neeraj Jain with regard to the same property on 21.01.2009. There are specific allegations against the petitioner that on the basis of forged and concocted documents, despite knowing the land in question is sold to Girish Kuraiya as he himself was the seller, he entered into a compromise as owner with Rakesh Gupta and Neeraj Jain when they filed a suit for specific performance, which resulted in a compromise decree in Lok Adalat and execution of sale deed dated 12.08.2022. Looking to the complaint as well as the FIR, registered against the petitioner clearly a case of cognizable offence is made out.

24. It is also settled that save and except in very exceptional circumstances, the Court could not look to any document relied upon by the accused in support of his defence. Moreover, the constitutional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only when the allegations made in the

complaint or the FIR, even if taken at their face value do not prima facie disclose the commission of any offence. Though the learned Senior Counsel appearing for the petitioner argued the issues touching the merits of the case by referring to the documents filed alongwith writ petition. However, at this stage, it would not be proper to embark upon the appreciation of evidence, as the FIR prima facie discloses commission of cognizable offence. Further this Court cannot prejudge a trial, especially when the investigation is still incomplete.

25. No ground for quashing the FIR at this stage is made out. Petition is dismissed.

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**(NANDITA DUBEY)
JUDGE**