

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

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 2<sup>nd</sup> OF APRIL, 2024**

**MISC. CRIMINAL CASE No. 6066 of 2024**

**BETWEEN:-**

**CHANDRAMOHAN DUBEY S/O SHRI SURESH KUMAR  
DUBEY, AGED ABOUT 42 YEARS, OCCUPATION:  
BUSINESS R/O VILLAGE BARMAAN KALA, TAHSEEL  
KARELI, DISTRICT NARSINGHPUR (MADHYA  
PRADESH)**

**.....APPLICANT**

***(BY SHRI ARUN KUMAR PANDEY - ADVOCATE)***

**AND**

**STATE OF MADHYA PRADESH STATION HOUSE  
OFFICER, POLICE STATION SUATALA, DISTRICT  
NARSINGHPUR (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SMT. SWATI ASEEM GEORGE – DEPUTY GOVERNMENT ADVOCATE)***

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

**ORDER**

This application under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No.526/2023 registered at Police Station Suatala, District Narsinghpur for offence under Sections 420, 34 of IPC.

2. It is submitted by counsel for applicant that applicant had purchased an agricultural land bearing survey numbers 225/3, 171/2, 172, 170, 166 and 168/2 situated at Village Chanwarpatha, Tehsil

Tendukheda from one Yogendra Singh, who has also been arrayed as an accused. As per the prosecution case, the land was already diverted and in order to save the stamp duty, the sale deed was executed by showing the land in question as an agricultural land. By letter dated 20.12.2023, Additional Collector, Narsinghpur directed Tehsildar, Tendukheda to lodge the FIR against applicant and co-accused for causing revenue loss to the State and for financial misappropriation also. Accordingly, FIR in question has been registered. It is submitted that in a separate proceeding Collector of Stamps has held that there was an evasion of stamp duty and accordingly by order dated 05.02.2024 passed in Case No.1/B-103/48(B)/2023-24 has also imposed a penalty which has been deposited by applicant. It is further submitted that once there is a specific provision under the Stamp Act for recovery of deficit stamp duty then taking resort to criminal action is unwarranted. Accordingly, it is prayed that FIR is bad in law. It is further submitted that petitioner is a *bona fide* purchaser and in revenue records it was being reflected as an agricultural land, therefore, under a *bona fide* belief he has purchased the land in dispute and under these circumstances, prosecution of applicant is bad in law. To buttress his contention, counsel for applicant has relied upon the judgment passed by Supreme Court in the case of **Mariam Fasihuddin and another vs. State by Adugodi Police Station and another** decided on **22.01.2024** in **Criminal Appeal No.335/2024** and the judgment passed by a coordinate Bench of this Court in the case of **Smt. Sudha Gupta and others vs. State of M.P. through P.S. Huzrat Kotwali, Gwalior** decided on **26.06.2024** in **MCRC No.3468/2014 (Gwalior Bench)**.

3. *Per contra*, the application is vehemently opposed by counsel for respondent.
4. Heard learned counsel for parties.
5. Since the facts of the case are in a narrow compass and have already been reproduced in the earlier part of this order, therefore, it is not necessary to reproduce the same. The only question for consideration is whether registration of a sale deed by showing the diverted land as an agricultural land thereby evading the stamp duty would amount to an offence under Section 420 of IPC or not?
6. Section 420 of IPC reads as under:

**“420. Cheating and dishonestly inducing delivery of property.:** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable fine.”
7. The necessary ingredients of cheating and dishonestly inducing delivery of property would include that there must be some deception on the part of accused thereby inducing another person to deliver any property or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable property and accused did so with a dishonest intention.
8. By relying upon the judgment passed by coordinate Bench of this Court in the case of **Smt. Sudha Gupta (supra)**, it is submitted by counsel for applicant that if there is an evasion of stamp duty, then it

cannot be said that any offence under Section 420 of IPC would be made out and referred to paragraphs 10 and 11 of aforesaid judgment.

9. Paragraphs 10 and 11 of judgment passed in the case of **Smt. Sudha Gupta (supra)** read as under:

“10. The relevant provisions are re-produced here for better understanding of the same:

S.120-B (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Section 420. Cheating and dishonestly inducing delivery of property-

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

The necessary ingredients of cheating and dishonestly inducing delivery of property is under :-

- (i) There must be deception ie the accused must have deceived someone
- (ii) That by the said deception. The accused must induce a person,
  - (a) to deliver any property; or
  - (b) to make, alter or destroy the whole or part of the valuable security or any thing which is signed or sealed and which is capable of being converted into a valuable property.
- (iii) That the accused did so dishonestly.

11. Keeping in mind the facts of this case, there is “no inducement” in the present case. Therefore, an important and essential ingredient of Section 420 of IPC is lacking.”

**Whether reasons are to be disclosed in judicial order.**

10. From the plain reading of judgment passed in the case of **Smt. Sudha Gupta (supra)**, it is clear that after reproducing the ingredients of cheating and dishonestly inducing delivery of property as well as the provisions of Section 120-B of IPC, the coordinate Bench of this Court directly held that keeping in mind the facts of the case, there is “no inducement” in the present case. Accordingly, counsel for applicant was directed to point out the reasons for coming to this conclusion and it was fairly conceded by counsel for applicant that coordinate Bench of this Court has not given any reasons to come to a conclusion that there was no inducement in the said case.

11. The Supreme Court in the case of **Central Board of Trustees v. M/s Indore Composite Pvt. Ltd.** reported in **(2018) 8 SCC 443** has held as under:

“11. After setting out the facts, the Division Bench proceeded to dispose of the writ petition with the following observations in its concluding paragraphs which read as under: (*EPFO case [EPFO v. Indore Composite (P) Ltd.*, 2017 SCC OnLine MP 1864] , SCC OnLine MP paras 9-11)

“9. *On due consideration of the aforesaid on the basis of the fresh documents and affidavit for taking additional documents on record*, we cannot direct the establishment to pay damages for the period from March 2006-April 2010 when all these objections were not taken before the learned Tribunal.

10. Considering the aforesaid, we are of the view that the order passed by the learned Tribunal is just and proper and no case for interference with the impugned order is warranted.

11. The writ petition filed by the petitioner has no merit and is accordingly dismissed.”

(emphasis supplied)

12. In our opinion, the need to remand the case to the High Court has occasioned for the reason that the Division Bench dismissed the writ petition filed by the appellant (petitioner) cursorily without dealing with any of the issues arising in the case as also the arguments urged by the parties in support of their case.

13. Indeed, in the absence of any application of judicial mind to the factual and legal controversy involved in the appeal and without there being any discussion, appreciation, reasoning and categorical findings on the issues and why the findings impugned in the writ petition deserve to be upheld or reversed, while dealing with the arguments of the parties in the light of legal principles applicable to the case, it is difficult for this Court to sustain such order of the Division Bench. The only expression used by the Division Bench in disposing of the

writ petition is “on due consideration”. It is not clear to us as to what was that due consideration which persuaded the Division Bench to dispose of the writ petition because we find that in the earlier paragraphs only facts are set out.

**14.** Time and again, this Court has emphasised on the courts the need to pass reasoned order in every case which must contain the narration of the bare facts of the case of the parties to the lis, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of the findings on all the issues arising in the case and urged by the learned counsel for the parties in support of its conclusion. It is really unfortunate that the Division Bench failed to keep in mind these principles while disposing of the writ petition. Such order, in our view, has undoubtedly caused prejudice to the parties because it deprived them to know the reasons as to why one party has won and other has lost. We can never countenance the manner in which such order was passed by the High Court which has compelled us to remand the matter to the High Court for deciding the writ petition afresh on merits.

**15.** In the light of the foregoing discussion, we allow the appeal, set aside the impugned order and remand the case to the Division Bench of the High Court for deciding the writ petition afresh on merits in accordance with law keeping in view our observations made supra. We, however, make it clear that we have refrained from making any observation on merits of the controversy having formed an opinion to remand the case to the High Court for the reasons mentioned above. The High Court would, therefore, decide the writ petition, uninfluenced by any of our observations, strictly in accordance with law.”

12. The reasons are the backbone of the order and only the reasons would point out as to whether there was any application of mind or not? In the case of **Central Board of Trustees (supra)** it has also been held that this proposition of law equally applies to judicial orders. Since no

reasons have been assigned in the judgment passed in the case of **Smt. Sudha Gupta (supra)**, therefore, this Court would consider what is the meaning of property and registration of a sale deed would fall within the definition of property or not?

**Whether registration of sale deed is a property within the meaning of Section 420 of IPC.**

13. As per the provisions of Registration Act, if value of the property is more than Rs.100/- then its registration is necessary. Therefore, it is clear that if value of the property is more than Rs.100/-, then unregistered sale deed is nothing but would be a waste piece of paper. Under these circumstances, the registration of the sale deed in respect of a property of more than Rs.100/- is necessary to transfer the right from one person to another.

14. The Supreme Court in the case of **Mariam Fasihuddin (supra)** has held as that “the term ‘property’ employed in Section 420 IPC has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value – is ordinarily understood as ‘property’. It also describes one’s exclusive right to possess, use and dispose of a thing. The immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth and moveable property is understood as intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

15. Therefore, counsel for applicant was requested to address on the question as to whether registration of sale deed would be covered by definition of property or not? It was fairly conceded that since



registration is required for transfer of ownership which is valuable right of parties, therefore, it would certainly fall within the definition of property.

16. Now the only question is that seeking registration of sale deed by falsely declaring the value of the property in order to avoid the payment of stamp duty would amount to deceiving the State authorities to deliver the property in the form of its registration or not?

17. Stamp duty is required as per the value of conveyance and if value of conveyance is deliberately shown to be less than what was actually transacted between the parties, then it would certainly amount to deceiving the State authorities to deliver the declaration in the form of registration of sale deed thereby transferring the rights of the property from one person (seller) to another person (purchaser). Under these circumstances, if registration of sale deed is sought by falsely declaring the value of the property, then it would *prima facie* falls within the definition of Section 420 of IPC.

**Whether applicant was the *bona fide* purchaser or not?**

18. It is submitted by counsel for applicant that in the revenue records the land was being shown as agricultural land and therefore, under a *bona fide* belief he had purchased the same.

19. Considered the submissions.

20. The land was a diverted land, therefore, the seller of the property must be aware of the fact that land is a diverted land. Whether the said fact was ever communicated by the seller to purchaser before registration of a sale deed or not is a disputed question of fact and will fall within the category of defence to be proved by applicant in the trial.

**Whether the Collector of Stamps before having imposed the penalty could have directed the authorities to lodge the FIR?**

21. Counsel for applicant could not point out any provision under the Stamp Act which prohibits the application of the provisions of IPC.

22. The Supreme Court in the case of **State of M.P. v. Rameshwar and others**, reported in **(2009) 11 SCC 424** has held as under:

“48. Mr Tankha's submissions, which were echoed by Mr Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved.”

23. The Supreme Court in the case of **Dhanraj N Asawani vs. Amarjeetsingh Moindersingh Bassi and others** decided on **25.07.2023** in **Criminal Appeal 2093/2023** has held as under:

“13. The respondents have submitted that the institution of the FIR by the appellant, which is based on the audit report, is in contravention of Section 81(5B). It is contended that only the auditor or the Registrar is empowered to file an FIR in terms of Section 81(5B). The substance of the respondents' argument is that the procedure laid down under Section 81(5B) is a special procedure, and will prevail over Section 154 of the CrPC. To fortify their submission, the respondents have relied on the decisions of this Court in **Jeewan Kumar Raut v. CBI** and **Jamiruddin Ansari v. CBI**.

14. The High Court was of the view that since the provisions of the 1960 Act are special in the sense that they govern co-operative societies in the state, the provisions of Section 81(5B) would preclude the

registration of an FIR at the behest of a person, such as the appellant, who is a shareholder of the co-operative society. We are unable to accept the view of the High Court. Neither expressly nor by necessary implication does the 1960 Act preclude the setting into motion of the criminal law by any person other than the auditor or the Registrar.

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24. Section 81(5B) of the Act casts a positive obligation on the auditor or the Registrar to file an FIR. It does not use any negative expression to prohibit persons other than the auditor or the Registrar from registering an FIR. Therefore, it would be contrary to basic principles of statutory construction to conclude that Section 81(5B) debars persons other than the auditor or the Registrar from filing an FIR. The ratio of the decision of this Court in **Jamiruddin Ansari** (supra) is predicated on a provision of law distinct from the statutory provision applicable to the present case.

25. Further reliance has been placed by the respondent on the decision of this Court in **Jeewan Kumar Raut** (supra) to contend that Section 81(5B) debars by necessary implication any person other than the auditor or the Registrar from filing an FIR. In that case, the issue before this Court was whether the provisions of the Transplantation of the Human Organs Act, 1994 barred the applicability of Section 167(2) of the CrPC pertaining to the grant of default bail. Section 22 of the TOHO Act prohibits taking of cognizance by courts except on a complaint made by an appropriate authority. This Court held that the TOHO Act is a special statute and will override the provisions of the CrPC so far as there is any conflict between the provisions of the two enactments. The Court further held that the police report filed by the CBI can only be considered as a complaint petition made by an appropriate authority under Section 22 of the TOHO Act. Therefore, the filing of a police report in terms of

Section 173(2) of the CrPC was held to be forbidden by necessary implication. Since CBI could not file a police report under Section 173(2), Section 167(2) of the CrPC was also held to be not applicable.

26. Exclusion by necessary implication can be inferred from the language and the intent of a statute. In **Jeewan Kumar Raut** (supra), this Court looked at the words of the statute as well as the overall scheme of investigation under the CrPC to infer that Section 22 of the TOHO Act bars the applicability of Section 167(2) of the CrPC by necessary implication. In the present case, the 1960 Act casts a positive obligation on the auditor or the Registrar to file an FIR when they discover a financial irregularity in a co-operative society. Section 81(5B) demands accountability and vigilance from the auditor and the Registrar in performance of their public duty. Moreover, a plain reading of the said provision does not lead to the conclusion that the legislature intends to debar any person other than the auditor or the Registrar from registering an FIR. Section 81(5B) cannot be interpreted to mean that any other person who comes to know about the financial irregularity on the basis of the audit report is debarred from reporting the irregularity to the police. In the absence of any specific provision or necessary intendment, such an inference will be against the interests of the society. The interests of the society will be safeguarded if financial irregularities in co-operative banks are reported to the police, who can subsequently take effective actions to investigate crimes and protect the commercial interests of the members of the society. In view of the above discussion, it is not possible for us to infer that Section 81(5B) of the 1960 Act bars by necessary implication any person other than an auditor or the Registrar from setting the criminal law into motion.

27. From the narration of submissions before this Court, it appears that on 31 May 2021, the Minister in-charge of the Co-operative department has set aside the audit report while directing a fresh audit report for

2016-2017 and 2017-2018. The order of the Minister has been called into question in independent proceedings before the High Court. This Court has been apprised of the fact that the proceedings are being heard before a Single Judge of the High Court. The proceedings which have been instituted to challenge the order of the Minister will have no bearing on whether the investigation by the police on the FIR which has been filed by the appellant should be allowed to proceed. The police have an independent power and even duty under the CrPC to investigate into an offence once information has been drawn to their attention indicating the commission of an offence. This power is not curtailed by the provisions of 1960 Act. There is no express bar and the provisions of Section 81(5B) do not by necessary implication exclude the investigative role of the police under the CrPC.

28. The High Court has relied on the decision of this Court in State of **Haryana v. Bhajan Lal** to quash the FIR. In that case, this Court held that the High Court can exercise its powers under Article 226 of the Constitution or Section 482 of the CrPC to quash an FIR where there is an express legal bar engrafted in any provisions of a special law with respect to the institution and continuance of the proceedings. As held above, Section 81(5B) does not contain any express or implied bar against any person from setting the criminal law in motion.”

24. Under these circumstances, in absence of any bar to the applicability of provisions of IPC, it cannot be held that in spite of fact that financial irregularity was committed by evading the stamp duty, no offence involving financial irregularity would be made out.

25. Under these circumstances, this Court is of considered opinion that since provisions of Stamp Act do not prohibit the application of provisions of IPC, therefore, merely because an order of penalty has already been passed by Collector of Stamps would not absolve the

applicant from his criminal liability. On the contrary the order of penalty passed by Collector of Stamps *prima facie* indicates that petitioner was guilty of evasion of stamp duty.

26. No other argument is advanced by the counsel for the applicant.

27. It is well established principle of law that while exercising power under Section 482 of Cr.P.C., this Court cannot consider the defence of accused and can quash the proceedings only if uncontroverted allegations do not make out an offence. Admittedly, the land in dispute was a diverted land but it was shown as an agricultural land and accordingly, less stamp duty was paid. Under these circumstances, if uncontroverted allegations are taken on their face value, then it can be said that *prima facie* an offence under Section 420 of IPC was made out.

28. Considering the totality of facts and circumstances of the case, this Court is of considered opinion that no case is made out warranting interference. Before parting with this order, this Court would like to point out that except the legal provisions all the factual aspects have been considered in the light of limited scope of jurisdiction.

29. Trial Court is directed to decide the trial strictly in accordance with evidence which would come on record without getting influenced or prejudiced by any factual observation made by this Court.

30. With aforesaid observations, the application is **dismissed**.

(G.S. AHLUWALIA)  
JUDGE